Public Strategy and Motion Pictures

The choice of instruments to promote the development of the Canadian film production industry

S. Daniel Lyon
Michael J. Trebilcock

Ontario Economic Council

Discussion Paper Series

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S. Daniel Lyon is a graduate of Brandeis University (with honours in theatre arts) and the Faculty of Law, University of Toronto, and is currently completing his articles with the law firm of Goodman & Goodman.

Michael J. Trebilcock is a professor of law at the Faculty of Law, University of Toronto, where he heads the Law and Economics Program.

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1
INTRODUCTION

This paper explores the multiplicity of economic instruments used to promote the Canadian film industry. By its nature, it includes a considerable amount of specialized history, which may be interesting in itself to some readers; our primary purpose, however, is to discover what policy or policies the government seeks in developing the film industry, why particular instruments were chosen, and whether these instruments accomplish their stated goals.

Competing views of state action

In the traditional economic conception, the role of government is to respond to various forms of market failure, but its intervention in economic and social affairs on any other grounds can rarely be regarded as welfare-maximizing. Thus, controlling monopoly, correcting for externalities, responding to information imperfections, and providing public goods are proper functions of government. In this view, government intervention is technocratic in nature, dictated by technocratically determined divergences from perfectly competitive market paradigms.

An alternative and more modern view of the economic role of government in democracies conceives of voters and politicians as policy demanders and suppliers respectively, with the behaviour of both being primarily motivated, as in private markets, by self-interest. Self-interest in the case of voters encompasses an infinitely wide range of possible sources of utility. Self-interest in the case of politicians may also entail a wide range of objectives, but one is immediate and unvarying: in order to meet other goals, the individual must attain and reattain electoral office. In this view of collective decision-making, public policy-making entails an intricate set of interactions among voters, politicians, bureaucrats and

interest groups; competing claims for favourable policies are brokered by politicans seeking vote-maximizing sets of elector coalitions. In contrast to the first view of the role of government, distributive rather than allocative considerations drive the political process, and wealth distribution rather than wealth creation becomes its dominant concern.

One might term the first view a 'public-interest theory' of the role of government, the second a 'private-interest theory'. In the first view, government policies seek to maximize collective welfare; in the second, politicians cater to the welfare of a subset of politically salient constituencies at the expense of the politically inconsequential.

In this study, we seek to come to some judgements about which of these two theories best explains government policies regarding the promotion of an indigenous film industry in Canada, with special emphasis on the feature film industry.

We also explore what factors best explain the particular choice of instruments now geared to this objective. One theory holds that once a policy objective has been agreed on, even if on 'private-interest' grounds, it is then in everybody's best interest that the instruments chosen achieve that objective at least cost (in other words, that they should be the most technically efficient available).

An alternative theory holds that the choice of objective and the choice of instrument are interdependent decisions and that only in choosing among instruments can objectives be defined with any precision, in part because a given instrument usually affects more than one objective and different instruments, therefore, call for different trade-offs among objectives. According to this second theory, the choice of both policy objectives and policy instruments is subject to a politician's vote-maximizing calculus: whenever possible, the benefits of policies are conferred on marginal ('swing') voters, costs are imposed on inframarginal voters, and information asymmetries between different groups of voters are fully exploited. Thus, in the case of widely dispersed interests where considerations of rational ignorance limit investments in information about policy alternatives or in the case of interests with bounded rationality (for example, the poor and the uneducated), symbolism may be more important than substance in the choice of policies. We explore these competing theories of the choice of governing instruments as a major theme in this study.

Cultural nationalism, which is at the root of Canadian film policies, can be explained by both the 'public-interest' and the 'private-interest' theories. With respect to the latter, Migué (1979, 71) has noted that the persons who are 'the primary beneficiaries of protection...can be expected to be the principal instigators of protectionist nationalistic policies.' Breton (1972) had earlier pursued the self-interest hypothesis and found that nationalistic policies redistribute wealth but do not create it. It is not surprising then that groups such as the Association of Canadian Television and Radio Artists, the Council of Canadian Filmmakers, and the Canadian Association of Motion Picture Producers have been extremely vocal in promoting cultural nationalism. This is not to suggest that the beliefs of the individual proponents are not genuinely held, nor that the interests of all the players are identical. However, it would be unrealistic to ignore the tangible gains that are enjoyed by actors, writers, technicians, producers, and other factors of production as a result of nationalistic cultural policies.[1]

Cultural nationalism can also be viewed as a reaction against a variety of forms of market failure. In this case, government intervention to stimulate the Canadian film industry is often justified on various 'public-interest' grounds, including positive cultural externalities; structural imbalances resulting from foreign domination and concentration of ownership; the possibility of wealth-maximization; and the positive production externalities of an infant industry. Each deserves explication.

Positive cultural externalities. Films can help to foster a stronger sense of Canadian identity, thereby providing social benefits not only to those

1 The various unions and associations that represent the Canadian film industry enjoyed substantial growth in membership during the 1970s. For example, the Directors' Guild of Canada grew from 150 members in 1977 to 600 in 1979. During the same period, CAMPP membership increased from 34 to 87; ACTRA grew from 5598 to 6221; and Cinematographers (International Alliance of Theatrical Stage Employees) Local 644 membership increased from 85 to 250. Two new Toronto-based associations, the Association of Canadian Film Craftspeople and the Canadian Film Sound Society, grew from initial memberships of 50 and 20 to 275 and 77 (fact sheet distributed by Filmworld [Sept. 1980]).

directly involved in creating or viewing them but to all members of the community. Since these benefits cannot be fully captured at the box office by producers, too few films involving themes that reinforce a collective sense of Canadian identity are likely to be produced in the absence of subsidies that tax the beneficiaries.

Along similar lines, it is argued that Canada's relatively small population makes it less costly to import foreign films than to create films of equivalent quality. Government intervention is justified on the merit-goods argument that it is desirable for Canadians to be exposed to more Canadian films rather than to films produced in other countries.

The positive cultural externality argument does not necessarily imply that movies with Canadian themes are the only films that can foster a sense of Canadian identity. It can also be strengthened by proving to the world through films that Canada can produce 'culture' just as well as can other advanced nations. Under this analysis, Canadians may not learn anything about themselves by viewing the films they produce, but praise from the international community improves their ability to enjoy their own accomplishments, thereby fostering a positive sense of identity. Thus, runs the argument, government subsidization of the film industry is politically rational as a relatively inexpensive tool for improving the self-image of Canadians.

It must be noted, however, that the feature film industry is currently losing support in some political circles because the body of films released to date, with some notable exceptions, has done more to weaken than to strengthen the Canadian self-image as a culturally important nation.

Structural imbalances in production. Film production companies are the firms that develop ideas into motion pictures. A recent study by Statistics Canada (1978) reveals substantial evidence of market failure in this activity. The majority of Canada's 276 production companies are small; 50 per cent earned $100,000 or less in 1978. Companies are frequently formed to produce one project, and there is a high turnover in the industry. Of the 15,298 film products completed during the year, only 28 were feature films. By contrast, 51 per cent were commercials, 18 per cent were productions of less than thirty minutes in length, 15 per cent were filmstrips, and 12 per cent were newsreels. Total revenues from the

sale and rental of all kinds of film and videotape productions to all markets amounted to $74.1 million, of which the television market (which buys series and specials, as well as commercials) accounted for 77 per cent.

According to Statistics Canada, the private sector accounted for an estimated one-third of the amounts committed to Canadian film and videotape productions in 1978. The other two-thirds was expended by the public sector, which 'therefore exerts what some would call a "disproportionate" influence on the structure of the film production industry, since it is not only a producer but also a major consumer' of films produced by private sector firms (Statistics Canada 1978, 51).

Structural imbalances in distribution. The film distributor obtains, from the producer, the right to distribute a film in a given market and territory. In the case of theatrical distribution, this involves the right to license a film for exhibition in cinemas either throughout the world or in a given country or group of countries. According to Statistics Canada (1978), 91 firms were engaged in the distribution of films in Canada in 1978, sharing total receipts of approximately $195 million. Although 75 per cent of the distributors were under Canadian financial control, the Canadian firms controlled only 29 per cent of the theatrical market and 28 per cent of the television market. Of the seven major distributors that accounted for 70 per cent of total distribution revenues in 1978, six were under foreign control, and 90 per cent of the films distributed to the Canadian theatrical market in 1978 were imported.

The six major American distributors operating in Canada are Twentieth Century-Fox, Warner Brothers, Paramount, Columbia, United Artists, and Universal. According to even more recent statistics, during the first six months of 1981, they released a total of seventy-one feature films, which grossed approximately $52 million at the Canadian box office. Nineteen smaller distributors, mainly Canadian independents, distributed 112 films during the same period for a total six-month gross of approximately $10.5 million (Filmworld 1981, 6). In other words, the six multinational distributors accounted for 85 per cent of the theatrical gross during the latest period for which figures are available.[2] Since these

2 Filmworld surveys only the three major exhibition chains; independent

distributors have no incentive to invest in Canadian productions, most of the money earned at the Canadian box office flows out of the country.

Moreover, Canadian feature-film producers make every effort to license their films to the majors, since the economic clout of the multinationals gives a film the best chance of wide distribution. (Traditionally, the majors do not treat the Canadian market as a separate entity but as part of the '[North] American market'.) Even during the boom production years of 1979 and 1980, many Canadian distributors have folded. Filmmakers with the best products usually turn to the American majors, leaving those with dubious commercial potential for distribution in Canada by Canadian companies.

The ability to obtain effective U.S. distribution may be the most important factor in the long-range viability of the Canadian industry, since the U.S. accounts for at least half the world market for Canadian films (Mallen 1980). Most U.S. production is financed directly or indirectly by the major and near-major distributors, the same companies on whom the Canadian independent producers must rely for profitable distribution in the U.S. The concentration of power and market share of the majors limits the access to the market, both domestic and foreign, for Canadian films.

Structural imbalances in exhibition. The three markets for the exhibition of films are the theatrical (movie houses), television (network, syndicated, and pay), and nontheatrical (government, industries, and education). In 1979, Statistics Canada identified 1362 motion picture theatres in Canada, including 292 drive-ins. Canadian moviegoers bought 98.2 million tickets during the year, bringing the theatrical exhibitors total receipts of $277.5 million.[3] Approximately 3.4 per cent of the total exhibition time was devoted to Canadian feature films.

The theatrical exhibition industry is characterized by concentration in ownership. Two national chains, Famous Players Ltd. and Canadian Odeon

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distributors have limited access to these chains, and distribute most of their product to independent theatres and smaller circuits.

3 The number of paid admissions increased 2.8 per cent to 100.9 million in 1980, and receipts increased 12.2 per cent to $311.4 million. However, the relative importance of movie-going has declined dramatically since 1952, when 256 million tickets were sold to Canadians. Home entertainment is expected to increase in popularity during the 1980s, with video cassettes, discs, and pay television as important new components.

Theatres Ltd., control many of the best screens in Canada, although smaller chains are important in some regions (for example, Landmark Cinemas in Western Canada). Originally, both major chains were under foreign financial control, but Odeon was acquired by Canadian interests from British owners in late 1977.

Although Famous Players controls only approximately 20 per cent of the indoor theatres in Canada, in 1978 its earnings accounted for nearly twice that percentage of total box office receipts. This imbalance can be explained by several factors, notably the size and locations of its theatres and its ability to acquire blockbuster movies because of its market share and historical relationship with major U.S. distributors, including Paramount, which shares the same U.S. parent.

Although Odeon, the second-largest exhibitor, is now under Canadian control, it has retained its historical ties with the majors. In fact, it shows fewer Canadian films than does Famous Players.

As for the television market, Canadian broadcasters can acquire popular American dramatic or comedy programs for less than the cost of acquiring or producing comparable Canadian shows. Moreover, since broadcasters rely on advertising dollars, there is a strong incentive to program a proven product backed by massive North American publicity. Thus, American shows provide both cost savings and ensured advertiser support.

Canadian-content regulations in broadcasting ensure the use of a certain number of indigenous productions, but market forces dictate that the quotas be filled largely with low-cost programming as long as high-quality foreign productions can be acquired cheaply. Independent producers face the additional barrier presented by vertically integrated production firms, which provide programs to their parent-company broadcasters. Even the Canadian Broadcasting Corporation provides only limited access to independent producers; out of a total production budget of some $200 million in 1980, the public network spent somewhere between $18 million (the CBC's estimate) and $2 or $3 million (the Canadian Film and Television Association's estimate) to acquire independent productions (Ferns 1980a).

In the nontheatrical market, the most contentious issue has been the National Film Board's role as both producer and commissioner of films sponsored by government agencies and departments. Recently, the NFB

has committed itself to contracting out increasing amounts of this work to the private sector.

Wealth maximization. The need to stimulate the growth of the film production industry is often justified in industrial terms, emphasizing its employment opportunities and multiplier effects. Although there is no doubt that dollars spent on film production will generate additional benefits in other sectors through the ripple effect, the choice of an appropriate multiplier (2.5? 3.5? 5.3?) is largely an arbitrary exercise. Economic impact studies that base their conclusions upon use of a multiplier rarely identify the procedure used to calculate it, fail to address the question of what economic activities would have occurred in the absence of the particular policy under study, and seldom compare the impact with that of other industries (Slack 1980, 49-51). In fact, it is probable that an expenditure of $1.00 on one industry would have approximately the same impact on the economy if it were spent on any industry of comparable size. And inevitably, the dollar so allocated has effectively been removed from some other sector.

Infant industry. The argument is sometimes made that initial public subsidization is required because firms face high barriers to entry and/or positive production externalities. For reasons expressed in the concluding chapter, we do not find this a convincing rationale for government intervention in the film industry.

A companion theory is that the economics of the film industry require government stimulation of massive amounts of production to foster an infrastructure that can eventually support the production of culturally significant films. The argument is plausible as it relates to the positive cultural externality rationale for intervention, but inherent in any policies responding to it are distortions, such as the continued public subsidization of exploitation films.

Overview of the instruments

Like all the cultural industries, film is a hybrid, involving both culture and an industry. Consequently, it is widely believed in government circles that it would not be profitable to attempt to design instruments that

would serve the objective of increased participation of Canadians in their economy but not the objective of increased Canadian content,[4] or vice versa.[5] In fact, 'Canadian content' has largely become synonymous with 'participation by Canadians' because the federal government is reluctant to design instruments that would require bureaucratic overseeing of the specific subject matter dealt with by the cultural industries.[6] Such measures are generally considered dangerously intrusive as well as somewhat impractical, given the difficulty of satisfactorily defining 'Canadian culture'. Canadian governments have also been aware of the impossibility of mandating artistic quality and have, therefore, developed policies to encourage significant levels of production activity in the hope that artistic excellence will emerge.[7]

One of the principal difficulties faced by governments in Canada in designing appropriate instruments to promote the film production industry has been the problem of defining and isolating those sectors that are deserving and in need of assistance. Both commercial and noncommercial film production activities receive subsidies. Feature films, television productions, films for governments, industrial films, educational films, television commercials, and experimental shorts may all have value to the economic and cultural life of the country, but it would be foolhardy to suggest that all could or should be supported by the same means and to the same extent. However, spillover effects are inevitable, as is some

4 These objectives regarding film policy have been identified by the Bureau of Management Consulting (1976, 37).

5 A senior official in the Department of the Secretary of State was recently quoted as stating, 'With our cultural concerns and our commercial concerns, we're trying to hit two birds with one stone'. (The Financial Post, 16 May 1981, p. 22).

6 Government control of film content has occasionally been proposed by interested parties. For example, among the Toronto Filmmakers' Co-op's 1972 proposals for Canada's film policy was the 'redefinition of Canadian content to include a film's artistic and cultural determinants, as well as its cast, crew and facilities' (Cinema Canada 2[1972]:36).

7 The federal government's 'two birds with one stone' approach to the attainment of industrial and cultural goals in the feature film industry is not the only conceivable solution. One prominent critic of Canadian film policies has suggested that 'the problems of film as art and film as commerce are separate and distinct and require separate policies... government must make two clearly defined sections of this unruly jumble - public and private - and stop this schizophrenic requirement that both fit into the same mold' (Cox 1974, 78).

degree of duplication of programs. For example, until 1979 a filmmaker and a nonprofit organization such as a sports club or a charity could apply together to Wintario for a grant of up to one-half the cost of making a short film. This type of noncommercial film (shown in schools, churches and so on rather than commercial theatres) is also eligible for support from the Ontario Arts Council. In addition, since the multiplicity of government programs were created piecemeal rather than growing out of a coherent policy, bureaucrats sometimes find it necessary to create unofficial programs in order to satisfy a need that does not seem to fit within existing guidelines. Thus, Ontario Arts Council grants have occasionally become nonrepayable 'investments' by default in commercially viable projects.

This discussion paper covers a variety of instruments used to promote both commercial and noncommercial film production. The boundary between these two realms is often hazy, as is the boundary between the film industry and the television-program-production industry. We have, however, generally excluded made-for-television productions, as opposed to other types of films for which television is one potential source of distribution. The annual federal expenditure for the Canadian Broadcasting Corporation ($737 million in 1981-2) far exceeds government expenditures at all levels for all other film-related instruments. Having noted this, we leave the question of the choice of instruments for Canadian broadcasting to other studies, although we do discuss Canadian-content regulation and pay-television as instruments for broadening the domestic market base for Canadian films.

Government intervention in the film production industry has encompassed almost the full range of possible choices of instruments, a multiplicity that exist without the benefit of a cohesive film policy. The following is a brief overview of these instruments, along with a bit of historical perspective. Later chapters provide more detail.

A department of government

In 1919, Canada became the first country to form a government filmmaking unit, under the Department of Trade and Commerce. This unit became the Canadian Government Motion Picture Bureau in 1922 and remained operational until absorbed by the National Film Board in June 1941.

The Bureau's function was to make films for government departments. It would not have been politically rational for the government to begin making cultural (as opposed to purely informational) films under the Bureau, since the Canadian public may always have been somewhat averse to any appearance of direct government interference in cultural activities. Then, as now, the politicization of the arts was thought to be dangerous in a liberal democracy, because of fears of propaganda and the dictating of taste, as well as of pork-barrelling.[8] An arm's-length relationship between politics and the arts had to be created through a Crown corporation such as the National Film Board.

The National Film Board

Contrary to popular belief, the National Film Board was not created in order to make propaganda films for the Second World War. Rather, it was founded in 1939 to make various kinds of films that would provide Canadians with a sense of their cultural identity, but the war intervened and dominated its activities during the first years.

The NFB has concentrated its efforts upon short films and documentaries, some of which have earned important awards as well as international prestige for it and its filmmakers. However, the growth of the private sector film industry has led to controversies about the NFB. For example, the private sector complained in the 1970s that the Board's pricing structure (it sometimes sells in the market below cost) operated to the disadvantage of the private companies, who, unlike the NFB, must be concerned with returning a profit. Another area of conflict has been the Board's role in producing as well as contracting out films sponsored by government departments and agencies. Finally, the NFB has successfully produced some feature films; even though their number has been limited and none has been commercially viable, a few have been considered culturally significant. Some parts of the private sector feel the NFB should not be producing them at all.

8 But see Robertson (1980, 106). The writer argues that orchestras, theatres, and other large arts institutions should be run as government departments, in order to facilitate greater public accountability as well as stability.

The Canadian Film Development Corporation

The Canadian Film Development Corporation was created in 1967. In the decade that followed, the Canadian feature film industry began to grow dramatically. The principal programs of the CFDC involve development (advancing funds to producers at an early stage of developing a film project), interim financing (providing loans), and equity investment in selected films. To achieve its objective of fostering and promoting the development of a feature film industry in Canada, the Corporation advises Canadian producers and assists them in promoting their films in foreign and domestic markets. It has also been responsible for administering an exhibitor quota and investment program, with modest results.

The Corporation has not been very effective in gaining wide distribution for large numbers of Canadian films in the domestic market, and it has come under fire for encouraging film productions that have a negligible likelihood of making positive contributions to Canada's search for cultural identity. Critics have also noted that the CFDC, particularly in its early years, made film 'investments' that were really grants, since the films assisted were of low commercial potential.

The Canada Council

Created in 1957, the Canada Council has grant programs that include assistance to filmmakers. Although many of these artists also work on commercial film productions, the Council's support is intended to allow them to create noncommercial films. However, some of the films funded by the Council have achieved limited success in the commercial television market. Grants to individuals are awarded under a variety of programs, on the recommendations of juries of peers. Independent filmmakers may apply for grants to cover total or partial production costs of specific projects. The Council also provides operating grants to nonprofit film organizations, including distribution centres and production co-operatives.

Provincial and Municipal Subsidies

Several provincial agencies across Canada parallel the functions of the Canada Council. The Ontario Arts Council, which is the largest, includes

among its programs project grants to filmmakers and an apprentice program in which the OAC places young people in jobs with arts organizations, including production companies, and pays 75 per cent of their salaries.

During the 1970s, the provinces became increasingly active in promoting the development of the commercial film industry. Quebec, Ontario, Alberta, and British Columbia have achieved considerable success in this endeavour. In Ontario, a brief but unique subsidy program for exhibitors from the Ministry of Culture and Recreation in 1979 contributed to public awareness of Canada's film industry.

Several municipalities, including the City of Toronto and the Municipality of Metropolitan Toronto, regularly provide direct subsidies for artistic endeavours. At this level, most of the funds support public film programs rather than the production of films. (For example, Metro has supported the Festival of Festivals since its inception and also provides annual grants to the Harbourfront film program.)

A growing number of municipalities also provide support services to commercial filmmakers. For example, the cities of Toronto, Calgary, and Montreal have set up centralized film-liason offices in order to co-ordinate permits (provided free of charge), police assistance, contact with various agencies and other city departments, and so on. This type of support mechanism is geared to the economic and job-creation benefits that can be gained from attracting production activity and is neutral as to the level of Canadian content in the films being produced.

The Capital Cost Allowance

Since 1975, Canadian taxpayers have been able to deduct from the income on which taxes are levied the full amount of money invested in certified feature films. Criteria for certification include using Canadians in a number of key positions. In addition, at least 75 per cent of the remuneration paid for other services must be paid to Canadians, and at least 75 per cent of the value of all postproduction services (for example, processing, sound rerecording, editing) must be rendered in Canada.

The capital cost allowance has been highly successful in generating a significant escalation of feature film production in Canada. Since 1976, investments in certified short films and videotapes have also been eligible for the allowance, a policy that has contributed to the growth in private-

sector television production. However, the program has been criticized for failing to result in the production of large numbers of uniquely Canadian films (a policy goal for which the instrument is probably not well suited). The November 1981 budget, which attacked tax-shelter opportunities including the capital cost allowance for film investment, substantially restricted the future of this program.

Regulation

Quotas and levies. In the mid-1970s, the two private companies that control many of the movie screens in Canada undertook to show Canadian feature films four weeks annually at each of their theatres in Canada. This voluntary quota program did increase the exhibition of Canadian films across the country, although one of the companies, Canadian Odeon, declined further participation after about two and a half years. The other company, Famous Players, has exceeded its quota in various periods.

Some sectors of the film community believe that the voluntary quota program has proven inadequate and have pressured the government to introduce a mandatory Canadian content quota for all commercial film exhibitors. Many other countries regulate film exhibition through such quotas, and this form of control of foreign product has been seriously considered in Canada. An alternative or complementary instrument is a levy, which would create funds for domestic production by taxing distributors or exhibitors. At least two secretaries of state have attempted unsuccessfully to interest the provinces in participating in a co-ordinated quota and/or levy program.

Canadian-content regulation. Canadian-content regulations in broadcasting constitute an indirect subsidy to the Canadian film industry by stimulating the demand for Canadian product. However, this policy instrument has been widely regarded as ineffective and is currently undergoing review by the Canadian Radio-television and Telecommunications Commission, which administers it.

Pay-television. Pay-television, which will be introduced on a national scale in Canada in 1983, is expected to be an important source of development financing (and therefore a stabilizing force) to the film industry. In

order to ensure that pay-TV will serve the goals of the Broadcasting Act, the CRTC attached conditions to each licence, requiring a minimum percentage of total time and revenues to be devoted to Canadian programs.

This concludes our survey of the instruments. Although the parameters of this paper are wide, we have excluded such important areas as government involvement in film festivals, public broadcasting, and film studies programs. Neither have we attempted to deal in any detail with the special concerns and realities of the French-language industry in Quebec. Our principal focus is on the choice of instruments to promote the Canadian feature film industry, but, given the close interrelationship between feature and nonfeature production, our discussion of the instruments embraces short productions and television productions to some extent as well.

In the following chapters, which discuss the various instruments just outlined, the technical and political reasons for the policy mix currently observed should become apparent.

2
THE NATIONAL FILM BOARD

The first policy instrument we shall examine is the National Film Board, a Crown corporation that both produces films and contracts them out to the private sector. Since few of its productions are of feature length and all of them are noncommercial, one might think it would have little impact on the feature film industry. Nevertheless, it is an important starting place for our considerations, partly because it embodies certain cultural goals, partly because it provides employment for many individuals in the industry.

Before the NFB: a brief history

Although the popular press frequently refers to the Canadian motion picture production industry as 'fledgling', it can hardly be considered 'the new kid on the industrial block' (Chetwynd 1978, 12). Unlike such truly novel developments as Telidon and fibre optics, the Canadian film industry has a history that can be traced back to before the First World War. Most early films were newsreels, covering events such as the Prince of Wales' visit to Quebec in 1903 and the Toronto fire of 1904, and promotional films commissioned by large companies such as the Canadian Pacific Railway. However, the early filmmakers were either Englishmen or Americans, who came to Canada on temporary assignments only. During the war, Canadian cameramen shot newsreels and recruiting films, while American production companies, such as Biograph, continued to use Canadian wilderness settings for their story films (Brittain 1974).

The first Canadian feature film was a five-reel version of Longfellow's poem 'Evangeline', released in 1914. As is the case for most of the estimated seventy feature films produced in Canada (with and without foreign participation) before 1939, no prints are known to have survived

(Kula 1975, 29). After the war, a flamboyant promoter from Hull emerged as the first Canadian independent producer. Ernest Shipman's most successful film, Back to God's Country (1919) was an enormous financial success, netting the investors a 300 per cent return. However, Shipman eventually left Canada, leaving behind a trail of unpaid bills.

Government involvement in Canadian film production began during the 1920s. The Ontario Government Motion Picture Bureau, which owned a studio in Trenton, produced films for farmers, while the Canadian Government Motion Picture Bureau, under the Department of Trade and Commerce, produced travel and nature movies, as well as information films for other government departments. The former was disbanded during the Depression, but the latter remained operational until it was absorbed by the National Film Board in 1941.

With the contemporary growth of the U.S. entertainment industry, politicians became increasingly concerned about the dominance of American films on Canadian screens. Their 1927 solution was to encourage Canadian businessmen to invest in a new production company, Canadian International Films.[1] Carry on Sergeant! the company's elaborate first movie, was a box office disaster, possibly because it was silent and the public preferred talkies. The high-profile failure called attention to the difficulty Canadian films had in obtaining proper distribution, given that large American firms owned most of the screens and were not eager to promote independent Canadian product (Brittain 1974).

In the 1930s, Associated Screen News, Canada's most successful producer of newsreels and industrial shorts, began to produce a series of shorts for theatrical release, the Canadian Cameo Series. According to the initiator of the project, 'The only hope I could see of getting a wedge into the theatrical market was by producing shorts which were thought of as fillers and no threat to the movie-making establishment' (Sparling 1977, 23). The series, made between 1932 and 1955, consisted of eighty-five

1 Government initiatives in response to American domination of Canadian screens have continued to be characterized by incentives to production (such as the 100 per cent capital cost allowance), rather than more direct means of addressing the problem, such as quotas. It should be noted that in the 1920s, a quota would not have been a viable instrument because there were very few Canadian films available for release and insufficient experienced personnel to produce a large number of quality products.

one-reelers on a wide range of subjects; many of the shorts received foreign distribution. ASN's founder, B.E. Norrish, resisted any temptation to begin producing feature films and encouraged other Canadians not to do so. Perhaps because his firm's laboratory enjoyed a lucrative business of making release prints (copies of films for exhibition in Canadian theatres) for U.S. distributors, Norrish was adamant in his position. In fact, he has been quoted as stating publicly that Canada had no more use for a feature film production company than had Hollywood for a paper mill (Brittain 1974).

No strong Canadian feature film production companies emerged during the Depression era. Producers were generally considered to be eccentrics or con men, hardly capable of developing an industry that could challenge the American motion picture companies. Meanwhile, the underfunded Canadian Government Motion Picture Bureau was unable to purchase the expensive equipment needed to produce sound films, so the public lost much interest in its work, to the detriment of revenues from theatrical markets. In response to this depressed situation, the National Film Society (now the Canadian Film Institute) was formed in 1934. Herrick (1978) credits the Society with successfully applying pressure for action in Ottawa. Ross McLean, personal secretary to Vincent Massey, the Canadian high commissioner in London, suggested in 1936 that John Grierson, the founder of Britain's successful government film unit, be invited to Canada to study the problems of the Canadian Motion Picture Bureau. Among his recommendations was making one central agency responsible for the film work of all government departments as well as for distribution of Canadian government films (Grierson 1938). As a result of the Grierson Report, which was strongly supported by Prime Minister Mackenzie King, the National Film Board was created in 1939.

The NFB's mandate

The National Film Act, which established the National Film Board, sets out an extremely broad mandate:

> The Board is established to initiate and promote the production and distribution of films in the national interest and in particular (a) to produce and distribute and to promote the production and distribution of

films designed to interpret Canada to Canadians and to other nations; (b) to represent the Government of Canada in its relations with persons engaged in commercial motion picture film activity in connection with motion picture films for the Government or any department thereof; (c) to engage in research in film activity and to make available the results thereof to persons engaged in the production of films; (d) to advise the Governor in Council in connection with film activities; (e) to discharge such other duties relating to film activity as the Governor in Council may direct it to undertake. (Section 9)

Moreover, the NFB's powers are explicitly far-reaching:

Except with the approval of the Governor in Council, no department shall initiate the production or processing of a motion picture film without the authority of the Board, and the production and processing of all motion picture films by or for departments shall be undertaken by the Board unless the Board is of opinion that it is in the public interest that it be otherwise undertaken and authorizes it to be so undertaken. (Section 11(i))

Efficiency is the rationale for giving the NFB such sweeping powers. Most government departments have no expertise in film production, and the costs of gaining it would be substantial. Private production companies contracted by departments could take advantage of this lack of knowledge by inflating budgets or skimping on production in unsatisfactory ways. Thus, this element of the role of the NFB can be interpreted as a means of reducing production costs.

The NFB and the private sector

In its early years, the Board had neither the manpower nor the equipment to meet all of the government's film requirements. Its solution was to assign productions to such private companies as Associated Screen News, Crawley Films, and the few others then extant (Ellis 1970, 45). However, the rapid growth of both the NFB (739 employees in 1945) and the private sector (which formed a trade association in 1948) began to create tensions in the relations between the two. Although the Board began regular meetings with the independent producers during the 1970s, the private sector remains dissatisfied with the percentage of government films produced by the NFB:

Many companies survive on the basis of that work from the government which is handled by the sponsored film program and we believe that the lion's-

share of this production must be in the hands of independent producers. Part of the Board's mandate is to promote the industry as a whole, and it must not keep unto itself work which is not essential to its survival, but on which the survival of the independent industry may depend. (Canadian Film and Television Association 1981, 18)

It is noteworthy that the private sector's central argument is not that it can produce films more efficiently nor that it can produce better films than the Board. Rather, it frames the issue in terms of survival - that is, guaranteed and large slice of the pie. It must be clear to politicians that in order to gain the approval of those voters associated with the independent production industry, the government must turn over most of its film production needs to the private sector.

In fact, much of this move has already been accomplished. In 1978, the federal government, through Secretary of State John Roberts' film policy, directed the NFB to contract out to the private sector 50 per cent of the first $4 million of the films sponsored annually by departments or agencies of the government, plus 75 per cent of the remainder. In practice, the private-sector portion of the pie may have reached 70 per cent by the time of Roberts' policy.[2] Since 1978, a Sponsor Program Review Board, made up of representatives of the NFB, the private sector, and government officials, has monitored the contracting process. In the summer of 1981, the NFB, the Association des Producteurs de Films du Québec, and the Canadian Film and Television Association concluded an agreement that the Board will remove itself almost entirely from the production of government-sponsored films by 1986. Another part of this agreement involves a collaborative effort to bring back to the NFB responsibility for all government production, approximately one-half of which is currently commissioned directly by federal agencies and departments in contravention of the National Film Act.

Some independent filmmakers have suggested that the federal government should stop financing the Board, requiring it to rely on its own resources (Losique 1976, 51).[3] Such a solution would be undesirable from several points of view. The interest of the nearly 1000 people on the

2 See CineMag 14 (Feb. 1979):8.
3 This recommendation was also included in the Massey minority report (Royal Commission: Arts, Letters and Sciences 1951).

permanent staff of the Board is obvious.[4] Perhaps less obvious is that the private sector would likely suffer as a result of the elimination of government funding of the NFB, which reached $53 million for 1982-3. A reduction in available funds could cause the Board to compete more vigorously with the private sector, rather than continuing its present program of co-operation. Financial constraints would also substantially reduce the amount of the NFB funds that are spent in the private sector,[5] as well as the number of coproductions it would enter into. Finally, it would not be in the best interests of politicians to cause the government to cease funding of the NFB because of the negative impression such a move would create among a significant number of voters. Not only would it raise the wrath of cultural nationalists, who have tremendous influence through the various media that employ many of them; a very substantial number of other marginal voters would also be displeased. The National Film Board is a source of pride to many Canadians, who are aware of the international prestige it brings the country.[6] In addition,the NFB is strongly supported by a large number of film users, some of whom command considerable political clout. These include individuals, educational institutions, churches, community groups and other beneficiaries of the Board's free-loan policy.[7]

The instrument

Having celebrated its fortieth anniversary in 1979, the National Film Board is the Western world's oldest government film unit. The film industry is

4 According to the NFB's 1979-80 Annual Report, it had 945 employees as of 31 March 1980.

5 The Board spends money in the private sector both directly, by contracting films and paying fees to individuals for professional services, equipment rentals, laboratory processing, and so on, and indirectly, by activities such as by promoting non-NFB films. This paper does not address the NFB's important role as a distributor of films.

6 The NFB's productions have earned some 2000 awards, including six high-profile Academy Awards and three Palmes d'Or from Cannes. In 1981, the Museum of Modern Art in New York ran a retrospective of over 300 NFB films, which was favourably reported in the Canadian and the American press.

7 NFB films are loaned free of charge in Canada to any person or group that does not charge admission.

certainly not the only sector in Canada in which public and private enterprise are active simultaneously - witness, for example, the airline, railway, broadcasting, and postal service industries. Nor is the film industry unique in being an area where the federal government both carries on a public enterprise and provides substantial incentives to the private sector; Petro-Canada and the oil industry quickly spring to mind.

As previously noted, the Crown corporation briefly co-existed with the federal government's original filmmaking unit, the Canadian Government Motion Picture Bureau. In December 1940, Film Commissioner and Chairman of the National Film Board John Grierson resigned to pressure the government to give the NFB total responsibility for Canadian films.[8] Prime Minister King supported him, and in June 1941 the Board absorbed the Bureau.

Among Grierson's complaints about the Bureau were the lack of flexibility (for example, in hiring) and the problems of applying civil service regulations to an activity such as filmmaking (Herrick 1978, 31). In other words, Grierson expressly favoured the institutional characteristics of a Crown corporation over those of a departmental bureaucracy.[9] He also thought it important to have the maximum possible independence, in order to shape the nature of Canadian filmmaking in the ways he saw fit with a minimum of political and bureaucratic interference (see Ellis 1970; Herrick 1978).

This 'distancing' from the political sphere, which is encouraged by a Crown corporation structure as opposed to a departmental one, continues to be crucial to the National Film Board for a variety of reasons. First, most Canadians would find it ideologically unsatisfactory for the government to exercise complete control over a major cultural agency. Second,

8 He claimed that by resigning, he would be free to express his views on government filmmaking without appearing to be simply trying to expand his personal power (Ellis 1970, 46).

9 See Trebilcock et al (1981, chapter 6). According to Borneman (1945, 51), Grierson hired his creative staff on a temporary basis so that no regulations would secure their positions. Although the NFB has continued to hire some production personnel on a temporary (fee) basis, it now also has a permanent staff of nearly 1000. This large size has led to criticisms that the Board is cumbersome and inefficient. Private sources at the NFB say the organization is currently conscious that too high a percentage of its resources is spent on administration and is studying means of reorganization in order to divest itself of nonproductive personnel.

since the Board competes with the private sector in the market for films, it is necessary for it to be removed from the political process in order to prevent a perception of prejudice by the private firms.[10] Finally, politicians must be able to distance themselves from the activities of the public filmmaking house in order to avoid direct voter accountability in matters of content and artistic taste of individual productions.

While the corporate mode permits the advantages of distancing, it does not imply a lack of financial accountability. The National Film Board is subject to the Financial Administration Act, with explicit accounting and reporting requirements. Supervision is also exercised by the government film commissioner and eight other Board members, all of whom are appointed by the governor-in-council. The Board, which consists of three public servants and five citizens drawn from each of the various regions of Canada, meets quarterly to review and approve the activities of the NFB. Film Board executives are closely questioned and generally do not regard the board of governors as a 'rubber-stamp'. Senior staff members of the Department of Communications maintain strong but informal ties with their NFB counterparts. Good relations were enhanced by the appointment of Pierre Juneau, a former NFB executive, as the deputy minister.[11] Thus, the National Film Board is a prime example of the government's using the corporate mode rather than the departmental in order to achieve a successful balance between independence and accountability.

The wide scope of the NFB's mandate could result in inefficiencies through possible overlap of responsibilities with other cultural agencies, such as the Canadian Film Development Corporation. In terms of ease of policy and program co-ordination, a Crown corporation may be a less desirable instrument than a government department. However, the Department of Communications maintains informal control by means of regular meetings, which are attended by representatives of all federal agencies involved in film. A logical alternative instrument to increase

10 However, the market for film production sponsored by federal departments is not competitive but rather is controlled by the NFB. The independent production industry does perceive prejudice rising from the nature of the Board's dual role of both producing films and contracting out other productions to private firms.

11 On 7 April 1982, he was named to the presidency of the Canadian Broadcasting Corporation, to succeed A.W. Johnson in August.

co-ordination would be the centralization of all federal film agencies (the NFB, CFDC, National Film Archives, and part of the Canada Council) into a single agency, on the model of the Australian Film Commission.[12] However, such centralization has been rejected in Canada due to concerns that such a monolithic agency would create more inefficiencies than it would solve.[13]

In terms of the choice of instruments, the National Film Board illustrates the value of public enterprise as well as the advantage of a Crown corporation over a departmental bureaucracy. An expert filmmaking agency reduces costs by consolidating the federal government's film production activities. As in the railways, airlines, and broadcasting, public enterprise in film has been an important component of nation-building. In earlier decades, private firms could not have satisfied the government's needs because of a lack of available risk capital as well as a lack of organizational and technical expertise. With the strengthening of the private sector in recent years, the Board has gradually reduced its role in the production of government-sponsored films while exploring new areas. For example, although its centralized structure is not generally conducive to the production of feature films (which require a free flow of capital and ideas), the NFB has produced a number of artistically excellent, though

12 Established by the Australian Film Commission Act of 1975, the AFC's major functions are to 'make, promote and distribute' and to 'encourage, whether by the provision of financial assistance or otherwise, promotion, distribution and broadcasting' of Australian films. Six Australian states have also established their own film agencies: New South Wales Film Corporation (1977), Queensland Film Corporation (1979), South Australian Film Corporation (1973), Tasmanian Film Corporation (1977), Victorian Film Corporation (1976), and the Western Australian Film Council (1979) (Australian Motion Picture Yearbook [North Melbourne, Victoria: Cinema Papers Pty Ltd., 1980]).

13 In 1982, Film Canada, an umbrella group of government agencies (CFDC, CBC, NFB and provincial film promotion offices) was formed to represent and promote Canadian films in foreign markets. The Institut Québécois du Cinéma refused to join the organization, and the private sector in both Quebec and English Canada strongly resisted this government attempt to represent both public and private sector interests abroad. As a result, the Department of Communications formed a committee, consisting of three representatives each from the public and the private sectors, to make recommendations for the future direction of Film Canada. Other means of centralization, such as transferring the Canadian Film Certification Office to the CFDC, are currently under consideration.

noncommercial features.[14] Perhaps the major problem of the National Film Board as an instrument of national cultural goals is that its productions, by nature, are viewed by fewer Canadians than are exposed to such popular mass entertainment as commercial feature films.[15] Therefore, the federal government has found it necessary to create new instruments (notably the CFDC and the capital cost allowance) in an attempt to foster the growth of a Canadian feature film industry.

14 The only English-language feature film in production during 1982 is The Wars, a coproduction with a private sector firm. Award-winning NFB features include J.A. Martin, Photographer (1976), Mon oncle Antoine (1971), One Man (1977), A Scream from Silence (1979), Why Rock the Boat? (1974), and Les Beaux Souvenirs (1980).

15 Distribution problems for NFB films have increased because of such trends as vastly reduced exhibition of shorts by theatres, restricted budgets of school boards, and the CBC's reliance on in-house producers. Some observers also believe that the Board's work is overly self-indulgent and that the NFB should be more responsive to the public. In 1981, the Board formed the Film Canada Centre, a Los Angeles office that serves as a liason between American distributors and Canadian producers including the NFB.

3

THE CANADIAN FILM DEVELOPMENT CORPORATION

The Canadian Film Development Corporation belongs to an important class of Crown corporations that provide capital to the private sector.[1] However, the CFDC is not only a film-financing institution, like the United Kingdom's National Film Finance Corporation; it has the power to make grants and awards in addition to loans and equity investments. Thus, the principal purpose of this instrument is to act as a catalyst to the development of an economically viable feature film industry in Canada.

History

When the CFDC was formed in 1968, Canada had no feature film industry to speak of. The previous year, less than $500,000 had been spent on the production of feature films, although Canadians had spent approximately $103.5 million at the box office. Government intervention was required in order to redress this imbalance, to reduce the flow of funds to foreign production companies through distributors, to provide employment to Canadians, and to enhance Canadian cultural development. Clearly, the forces of cultural nationalism provided the catalyst for the establishment of the instrument.

Public enterprise could not have fulfilled these purposes for a variety of reasons. John Grierson, who was responsible for setting the direction of the National Film Board, did nothing to encourage feature filmmaking. Apparently, he felt that this sector should be left to the British and the Americans (Kramer 1978). Although the Board has successfully produced a number of feature films, many of these were developed 'accidentally'

1 Other members of this group include the Ontario Development Corporation, the Federal Business Development Bank, the Farm Credit Corporation, and the Export Development Corporation.

rather than as a result of NFB policy. (For example, Don Owen's highly regarded feature Nobody Waved Goodbye [1964] was originally funded as a thirty-minute documentary.[2]) Generally, feature production would be too risky and demand an unreasonably high proportion of the NFB's energies and budget. In recent years, the Board has made almost no resources available for English-language feature production, although it has retained its commitment to French-language features because of its perception that Francophone filmmakers are less well served than Anglophone by other government policies.

By creating a new agency rather than increasing the funding and functions of the NFB, the federal government avoided a number of potential difficulties. The most important considerations derived from the Board's relationship with the private sector. By the mid-1960s, independent firms were already voicing their opposition to the Board's statutory power to decide which government films to produce itself and which to contract out. If the Board were given the additional responsibility of funding feature productions, its role as a producer would appear to conflict with its role as a financier.[3] From another point of view, what would be the logic in the Board's refusing to allocate its resources to produce a particular film but providing an independent producer with the necessary funds? More generally, since the NFB was disliked in some circles, it was likely decided that a new agency with a fresh mandate would have a better chance at success.

In fact, the report that led to the formation of the CFDC recommended that the new agency take over the administration of the National Film Act, a move that would have resulted in the absorption of the NFB into the CFDC. The precedent cited for such a measure was the establishment of the Central Mortgage and Housing Corporation in 1946, by which the new Crown corporation took over the administration of the

2 Owen's cameraman, John Spotton, explained, 'I kept on ordering more film. It so happened that all the people were away so that in fact there was nobody at the NFB to say don't send any more film. They kept on sending film and I kept on shooting...so the thing grew' (Edwards 1973).

3 This theme emerged during the House debates with regard to the management role of the government film commissioner in both agencies (Hansard, Commons Debates, 3 February 1967, 12649-51, 66).

National Housing Act from the Housing Branch of the Department of Finance (Firestone 1965). However, this precedent was of questionable applicability because it did not involve the absorption of a strong and unique Crown corporation, such as the NFB, into a new corporation with a broader mandate. Although the federal government has shown a willingness to shift the organization of a controversial department - for example, the Post Office - into a Crown corporation, it has rarely attempted to subsume all of the responsibilities of one successful Crown corporation into another.

Discussions in the House of Commons prior to the passing of the Canadian Film Development Corporation Act reveal substantial confusion concerning the choice of instrument. Various alternatives to the new Crown corporation were suggested, including giving the responsibility of promoting the development of the feature film industry to the Canada Council. In response, Secretary of State Judy LaMarsh explained that the function of the CFDC was to be principally one of a banker, which is 'quite different from the ordinary function of the Canada Council, which makes grants' (Hansard, Commons Debates, 27 January 1967, 12374-5). Since the Council traditionally supports activities that are never expected to become self-supporting, it would have appeared incongruous to attempt to stimulate a commercially viable industry through that agency.[4]

Much of the debate in the House focussed on the question of film distribution. Several speakers were skeptical about the potential benefits of the legislation, given that it was not accompanied by stronger measures such as a levy or quota (which will be discussed in Chapter 7). However, there was no real opposition to the legislation, in part because it had already been delayed for an inordinate amount of time. Former Secretary of State Maurice Lamontagne had announced on 4 August 1964 the government's intention of establishing a loan fund to aid in the development of a feature film industry in Canada. Although this proposal was incorporated in the Speech from the Throne of 6 April 1965, the bill was not given

4 However, the barrier between commercial and noncommercial cultural activities has become much less rigid in recent years. For example, in 1980 the Canada Council initiated a venture-capital program for the performing arts, under which commercial producers of theatre, music, or dance may be provided with up to 25 per cent of the budget of selected projects.

second reading until 27 January 1967. The CFDC was formally established at the first meeting of its board in April 1968.

Mandate and operations

Section 18(1) of the enabling act gave the Canadian Film Development Corporation an original appropriation of $10 million, to be paid out of the Consolidated Revenue Fund as required. The corporation consists of six members appointed by the governor-in-council, as well as the government film commissioner. Operations are supervised by an executive director, who employs a permanent staff in addition to a variety of consultants.

Section 10 of the Canadian Film Development Corporation Act sets out the corporation's objects and powers:

1. The objects of the Corporation are to foster and promote the development of a feature film industry in Canada, and without limiting the generality of the foregoing, the Corporation may, in furtherance of its objects,

   (a) invest in individual Canadian feature film productions in return for a share in the proceeds from any such production;

   (b) make loans to producers of individual Canadian feature film productions and charge interest thereon;

   (c) make awards for outstanding accomplishments in the production of Canadian feature films;

   (d) make grants to film-makers and film technicians resident in Canada to assist them in improving their craft; and

   (e) advise and assist the producers of Canadian feature films in the distribution of such films and in the administrative functions of feature film production.

2. For the purposes of this Act, a "Canadian feature film" or "Canadian feature film production" is a feature film or feature film production in respect of which the Corporation has determined

   (a) that the completed film will, in the judgment of the Corporation, have a significant Canadian creative, artistic and technical content, and that arrangements have been made to ensure that the copyright in the completed film will be beneficially owned by an individual resident in Canada, by a corporation incorporated under the laws of Canada or a province or by any combination of such persons; or

   (b) that provision has been made for the production of the film under a co-production agreement entered into between Canada and another country.

3. The Corporation shall not be regarded as a partner in any film production in which it may invest and its liability shall be limited to the amount of its investment in the production.

4. The Corporation shall, to the greatest possible extent consistent with the performance of its duties under this Act, consult and co-operate with departments, branches and agencies of the Government of Canada and of the governments of the provinces having duties related to, or having aims or objects related to those of the Corporation.

By the wording of Section 10(2), Parliament largely left the decision of what constitutes a 'Canadian feature film' to the judgement of the CFDC. The original guidelines developed by the Corporation required at least two of a film's three principal creators (the writer, the director, and the producer) to be Canadians (subject to some exceptions); a maximum of two of the other creative contributors (the designer, the composer, the editor, the cinematographer) could be non-Canadians.[5] Recently, the CFDC announced more stringent guidelines that consist of the following seven elements:

1 All producer functions, including executive producer, should be Canadian in films in which the C.F.D.C. invests. This does not apply to official co-productions.

2 In the normal course, the Corporation will prefer that both the screenwriter and the director be Canadian. The Corporation will not invest in any film where both the writer and director are not Canadian. The C.F.D.C. will only accept a foreign director when that director has an outstanding reputation and agrees to assist in the industry's development programs and where the project, as a whole, offers exceptional opportunities for Canadian creative talent.

3 To encourage Canadian writers, the C.F.D.C. will not invest in the development of screenplays written by foreigners.

4 The C.F.D.C. will only participate in films in which at least one of the leading roles is Canadian. The Corporation will continue to insist that Canadian stars get billing equivalent to their foreign counterparts.

5 The C.F.D.C. continues to believe that no distinction should be made between resident and non-resident Canadians in order to encourage Canadians to practice their art in our country. It also believes that landed immigrants should continue to enjoy the same rights and privileges as other Canadians. However, in line with the policy established by Foreign Investment Review Agency, landed immigrants who choose not to become citizens within one year of their becoming eligible to do so will ordinarily cease to be considered as qualifying Canadians.

5 This is not to be confused with the point system developed later for determining the eligibility of a Canadian film for certification under the Income Tax Act.

6 The C.F.D.C. will not participate in films that unnecessarily disguise their Canadian locations. Films that by their subject require a foreign setting will continue to be eligible. The C.F.D.C. will always be favourable to themes that particularly reflect the Canadian character and way of life but the Corporation does not intend to restrict film-makers in their choice of subjects.

7 In order to make the best use of its limited funds, the C.F.D.C. will normally participate only in co-productions in which Canadians have a majority participation. (CFDC, News Release, 28 March 1980)

The rationale behind these new guidelines is a desire to ensure greater opportunities for Canadian talent to develop, without harming the commercial potential of the films. If the CFDC had attempted to apply similar constraints upon its participation in films in earlier years, it is likely that producers would have protested that the resulting films could not possibly be commercially viable. Now, however, the consensus in the production community is that the industry has matured sufficiently so as to make the guidelines reasonable. Since an industrial development policy must be tailored to the needs of the target industry, it seems appropriate that the funding body (here, the CFDC), rather than Parliament, should set most of the specific priorities.

The Corporation originally showed a preference for investments over loans. (This policy was reversed in 1978 when Michael McCabe replaced the first executive director, Michael Spencer, formerly with the NFB.[6]) However, most of the Corporation's 'investments' were, in effect, 'grants' since the films in which it participated had a negligible chance of returning their investment. Between 1969 and 1978, its annual revenues from equity investments never exceeded 20 per cent of its total film investments, and it twice exhausted its appropriation. Consequently, the Corporation's statutory financial ceiling was increased to $20 million in 1971 and later to $25 million, and since the 1976-7 fiscal year, it has been funded by means of an annual appropriation in the $4 million range ($4.47 million in 1982-3).

Each financial crisis of the CFDC has been rectified by an additional

6 The current executive director is André Lamy, appointed in August 1980.

appropriation, a difficult process for a Crown corporation that was intended to operate with a revolving fund.[7] Considering the high budgets of feature films and the fact that many of the CFDC's expenses (such as administrative costs) cannot be directly translated into income from investments or loans, a larger initial appropriation would have been preferable. Evidence suggests that the government was not wholly committed to the instrument and considered it somewhat of an experiment. In fact, the secretary of state informed the House that she was not in the position to guarantee that the $10 million would not be shortly exhausted (Hansard, Commons Debates, 3 February 1967, 12658).

The Corporation has provided assistance to some 300 films since its inception. In addition to equity investments in selected films, the CFDC currently makes loans to producers. These totalled approximately $3.3 million in 1978-9 and $7.75 million in 1979-80. The rate of default is negligible, and interest (currently set at 1 per cent over the prime rate) and fees are earned, although they do not cover the CFDC's administrative costs. Under a 'development program,' funds are advanced, on a matching basis with the producer, at an early stage to assist in script preparation, contracting of talent, and so on. The Corporation also has an 'interim financing program', in which up to $500,000 per film is made available before permanent financing can be secured (which is normally late in the year because of the nature of tax-shelter financing). Under both programs, loans are repaid when the production funds are raised, and until recently the CFDC retained a profit participation.[8] In June 1981, the minister of communications announced the establishment of a $4 million interim-financing fund for the Corporation, so these loans are no longer provided from its regular operating budget.

The Corporation's 1978 decision to enter into the role of interim financier was based on both economic and cultural factors. Realizing that its mandate was to foster a self-sustaining industry rather than 'an

7 The British National Film Finance Corporation suffered a similar financial drain. Now the British government, rather than expecting the NFFC to turn a profit, gives it an annual share in the Eady Levy (see Chapter 7 for a description of this instrument).

8 As of 1 April 1982, the CFDC dropped its profit participation in films for which it makes loans.

ongoing dependent of the government' (Canadian Film Development Corporation 1979, 4), it developed the new strategy in order to use its limited funds to aid a greater number of productions at a considerably lower risk than would have been experienced by continuing its earlier policy of making equity investments. Moreover, it hoped to demonstrate to institutional lenders the government's willingness to share the risk, encouraging them to become involved in providing interim financing to the film industry. The cultural goals of the Corporation are not ignored by the loan program, since the CFDC applies criteria governing the use of Canadian talent in order to select the films to which loans are provided. Equity investments, normally not exceeding $200,000, are currently made only in films with relatively low production budgets (under $1.25 million) and 100 per cent Canadian entrepreneurial, creative, and technical content (Canadian Film Development Corporation 1981, 7-12). The establishment of the interim-financing fund has resulted in the greater availability of funds from the CFDC's operating budget for investment in these higher-risk but ostensibly culturally significant films.

The administration of coproduction treaties is an additional area of CFDC responsibility. Canada has concluded treaties with France (1963), Israel (1978), Italy (1969), Germany (1978), and the United Kingdom (1975). These agreements are intended to encourage collaboration under terms that guarantee an overall balance between the two countries' creative, artistic, and technical contributions. Films that meet the criteria for an official coproduction are eligible for the Capital Cost Allowance as well as CFDC assistance and any aid schemes in the foreign country. The budgets of the forty-four coproductions produced under these treaties have totalled over $81 million. Benefits to Canadian filmmakers include collaboration with more experienced producers and creative personnel, the opening of foreign markets, and access to additional financial resources. However, a Corporation-commissioned study recently found that imbalances have always favoured the foreign partner, in such ways as excluding Canadian writers, directors, and directors of photography (CFDC 1980). As a result, the CFDC is planning to establish new guidelines for Canadian producers planning foreign coproductions (Canadian Film Development Corporation 1981, 16).

Distribution and exhibition also concern the CFDC. It provides funds

to independent Canadian distributors in order to assist them with the marketing of their films[9] and promotes Canada as a filmmaking country through its annual presence at the Cannes Film Festival and the American Film Market in Los Angeles. It also supports the international film market at the World Film Festival in Montreal, the trade forum at the Festival of Festivals in Toronto, and various seminars for those involved in the film industry. Another important Corporation function is the supervision of a voluntary exhibitor quota and investment program, which is discussed in Chapter 7. Recently, the CFDC was authorized to become active in assisting the nonfeature production sector, a reflection of the eroding boundary between the film and the program-production industries.

The instrument

By creating a new agency to promote the development of the Canadian feature film industry, the federal government focussed more attention on its $10-million commitment than it would have done by appropriating the same amount of money to an existing agency. However, exaggeration of the benefits was not the primary rationale for the choice of instrument. As previously noted, the National Film Board's uneasy relationship with the private sector and the Canada Council's traditional role as a permanent supporter of noncommercial activities prevented these agencies from taking on the role of banker to the film industry. A separate Crown corporation was necessary even though it entailed efficiency losses created by the additional administrative expenses, policy coordination costs, and so on.[10]

9 In 1981, nine theatrical launches of certified Canadian feature films were aided by a total CFDC expenditure of $132,000. Under its investment program, available only to films that have been assisted by CFDC financing, the Corporation will invest up to $25,000 based on matching funds from the distributor. The investment is repayable in full from revenues on a first-out basis. All Canadian films are eligible for a loan of up to $25,000, repayable with interest, for assistance to the theatrical launch in Canada, but this program is not very attractive to independent Canadian distributors, who do not normally invest in the films they distribute (see Cinema Canada 81, [February 1982]:24).

10 According to a 1976 document prepared for the Cabinet, the Department of Finance believed that 'the role of lender or guarantor of loans would be inappropriate for the CFDC since this would duplicate the function of existing government and private institutions' (Secretary of State 1976, 23). Finance officials suggested that the Federal

One measure of the effectiveness of a government loan and investment fund is the extent to which it encourages private capital to enter the target industry. Unless private investors increasingly show their willingness to share the risks with the government, it may be more technically efficient to reach the policy objective through public enterprise. During its first decade or so, the CFDC investment program bore a disproportionate share of the risks. In 1975-6, its share of production costs actually exceeded the contribution of the private sector, 64.62 per cent to 35.38 per cent (Canadian Film Development Corporation 1976, 4).

Two related developments corrected this imbalance. Public financing under the 100 per cent capital cost allowance became extremely popular in 1979 and 1980. The CFDC became an interim financier, providing loans to enable producers to commence production before permanent financing was arranged. As a result, the amount of production activity encouraged by government policy increased dramatically. However, it should be noted that the federal government has remained a substantial financial partner in the film industry, since a sizeable proportion of the new capital is public money allocated by individual taxpayers under the capital cost allowance program.

The early experience of the CFDC demonstrates the danger inherent in public intervention in an unproven industry through a revolving equity investment fund. Since there were not enough successful ventures to replenish the fund, additional appropriations became necessary. This apparent failure damaged the credibility of both the industry and the instrument; it also limited the amount of new production activity that could be generated. It is currently recognized, however, that the Canadian feature film industry will always need government subsidies - an attitude quite distinct from the original plan to stimulate a young industry that would soon be able to stand on its own.

The Corporation has succeeded in achieving its major purpose of fostering the development of a feature film industry in Canada. Before the introduction of the capital cost allowance, it was directly responsible

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Business Development Bank could provide the necessary loans to the film industry. Since by this time the CFDC had been in operation for nearly a decade and had acquired considerable experience and knowledge of the film industry, the Department of Finance's suggestion was not adopted.

for increasing the average annual rate of production of feature films from four (prior to 1967) to twenty-three, creating many new jobs in the process. However, it is apparent that few of the English-language films it has assisted have reflected anything of a uniquely Canadian culture and that most have not been well received - if they were shown at all. By way of illustration, Table 1 presents the English-language feature films produced with CFDC assistance between 1 April 1978 and 31 March 1980.

Not surprisingly, the production industry has lobbied heavily in support of the Corporation in periods of crisis. Direct beneficiaries of its support include directors, producers, actors, and technicians. Unions and associations such as the Directors Guild of Canada, the Association of Canadian Television and Radio Artists, and the Canadian Association of Motion Picture Producers all experienced dramatic growth in membership in the 1970s. However, the creative community has at times been highly critical of CFDC policies. In 1979, the Quebec directors' association, the Association des Réalisateurs de Films du Québec, called for the resignation of CFDC top management, charging 'the use of public funds to orient Québécois and Canadian production toward a unique American model' (CineMag 15 [March 1979]:3). Although the concerns of the Québécois directors are shared by many cultural nationalists, the commercial sector has defended CFDC policies by pointing to the increased amount of employment enjoyed by film industry workers.[11] Heat from Quebec has been substantially diffused by new Corporation policies[12] as well as by the development of a provincial film funding agency, the Institut Québécois du Cinéma.

The CFDC's greatest effectiveness has been in the provision of bridge financing to assist production. However, only a few out of the many films thus assisted satisfy nationalists by promoting an identifiable Canadian culture through film. An alternative role for the CFDC would be one of producer; for $10 million, ten low-budget feature films could be produced

11 The film production, distribution and exhibition industries in the private sector together employ an estimated 20,000 persons (Canadian Film Development Corporation 1981, 27).

12 In particular, the CFDC takes second position to the investors in French-language films, and its equity investment program is tailored to low-budget films as opposed to elaborate 'international' productions.

TABLE 1

English-language feature films produced with CFDC assistance, 1 April 1978 to 31 March 1980

Not yet released[a]	Test-marketed only[b]	Released; no commercial success	Commercial success[c]	Canadian theme[d]
Deadline	Title Shot	The Brood	Scanners	Surfacing
Drats	Final Assignment	City on Fire	Murder by Decree	Suzanne
This Time Forever	Finishing Touch	Cries in the Night	Running	Two Solitudes
Summer's Children	Head On	Fish Hawk	Atlantic City	Jack London's Tales of the Klondike (television)
Babe		Wild Horse Hank	Middle Age Crazy	The Plouffe Family (dubbed)
Circle of Two		Hog Wild	Meatballs	A Man Called Intrepid
Going for Broke		Agency		
Mr. Patman		Bear Island		
		Fast Company		
		Stone Cold Dead		
		Dirty Tricks		
		Improper Channels		
		Tanya's Island		
		Under the Cover Cops		
		The High Country		
		The Last Chase		
		Tulips		
		Three Card Monte		

a Not released in theatres as of April 1982. Other Canadian feature films produced subsequently, such as Ticket to Heaven and Quest for Fire (coproduction), have been released and have achieved commercial success as defined in note c.

b Test-marketed only; general release may or may not follow.

c Commercial success, defined as wide distribution and favourable public response though not necessarily full recoupment to investors.

d Canadian subject matter or other significant Canadian cultural content. None of these films attained commercial success as defined in note c, but the French-language Les Plouffe and the television version of A Man Called Intrepid did achieve such success. Some films not listed under this heading have Canadian settings that are identifiable as such.

SOURCE: **Data supplied by CFDC.**

and exhibited on the CBC, in theatres, or both.[13] However, doing this would not create the number of job opportunities that have been developed by providing assistance to the private sector, an approach that generates investment in film production on a ratio of five private dollars for every government dollar (according to a CFDC estimate). More fundamentally, the federal government may perceive a reaction against public enterprise's dominating the cultural field and fear that the CFDC as a production house would prove not only a financial burden, requiring at least triple its current annual budget, but also a political embarrassment. With the government in the role of executive producer, Canadians might soon hold the politicians directly accountable (rather than only indirectly, as at present) for financing the entire cost of the inevitable majority of productions that would be neither culturally important nor widely entertaining.[14]

13 Such a solution was proposed in 1973 by the Council of Canadian Filmmakers (Cinema Canada 8: 6) Few industry participants would currently favour this proposal, which, if implemented, would cause confusion between the roles of the CFDC and the NFB. The exhibition of films thus produced would remain uncertain, since the CBC and theatrical or pay-TV distributors might not acquire them, and any project to rent theatres (which the Corporation attempted in a brief Quebec experiment) would be prohibitively expensive.

14 The major risk element in the feature film industry is the unpredictability of consumer tastes. There is no reason to suppose that this risk would be reduced because of the participation of public enterprise.

4
THE CANADA COUNCIL

Although the Canada Council deals primarily in areas that are well removed from the commercial sphere, no discussion of any Canadian cultural industry can overlook its importance.

History and mandate

In 1944, the Canadian government set up the Special Committee on Reconstruction and Re-Establishment to plan social policies for the postwar period. When it gave no consideration to the role of the arts, Canadian artists, representing fifteen arts organizations, reacted by marching on Parliament and submitting The Artists' Brief, which recommended establishing a federal body devoted wholly to the arts (Lussier 1977, 2).

In contemporary Canada, neither the government nor private foundations were strong supporters of cultural activities, as they were in Europe and the United States respectively. As a result, the country had the poor international reputation of 'a coarse-grained adolescent still clearing the land, lacking the leisure and taste for refinement' (Bothwell, Drummond, and English 1981, 165). This image particularly irked two internationalist Liberal ministers, Brooke Claxton and Lester Pearson, who pressured the government for a royal commission on the arts.

As a result of the march on Parliament and the efforts of Claxton and Pearson, the Royal Commission on National Development in the Arts, Letters and Sciences was established in 1949. Commonly known as the Massey Commission after its chairman, Vincent Massey, it produced a report after two years of consideration and consultation across Canada. The Massey Report of 1951 made a number of recommendations, including more generous federal support for cultural institutions and the establishment of a 'Canada Council for the Encouragement of the Arts, Letters,

Humanities and Social Sciences.' Naturally, these recommendations were 'greeted with acclaim by most of the Canadian artistic and intellectual community' (Bothwell, Drummond, and English 1981, 167). However, the Canada Council was not established until 1957. The delay has been attributed to a difficulty in finding the necessary funds (Lussier 1977, 2), which in turn can be traced to the nervousness of politicians about the impact on the electorate of the formation of a purely cultural agency (Bothwell, Drummond, and English 1981, 167).

The Canada Council is a corporation whose board consists of a chairman, vice-chairman, and up to nineteen other members appointed by the governor-in-council. As prescribed in the Canada Council Act of 1957, its principal objects are:

> to foster and promote the study and enjoyment of, and the production of works in, the arts and, in particular, but without limiting the generality of the foregoing, the Council may, in the furtherance of its objects, (a) assist, co-operate with and enlist the aid of organizations, the objects of which are similar to any of the objects of the Council; (b) provide, through appropriate organizations or otherwise, for grants, scholarships or loans to persons in Canada for study or research in the arts in Canada or elsewhere or to persons in other countries for study or research in the arts in Canada; (c) make awards to persons in Canada for outstanding accomplishment in the arts; (d) arrange for and sponsor exhibitions, performances and publications of works in the arts; (e) exchange with other countries or organizations or persons therein knowledge and information respecting the arts; and (f) arrange for representation and interpretation of Canadian arts in other countries. (Section 8(1))

The Council's activities are financed by an annual grant from Parliament, as well as by the return on investment from its original endowment fund of $50 million.[1] Bequests, gifts, and special funds donated to the Council for specific purposes provide additional financial sources. Its total budget for 1982-3 is $71.69 million, of which arts expenditures will exceed $65 million. As required by the enabling legislation, its accounts are audited annually by the auditor general, and

1 In the early years, the Council relied almost entirely on the proceeds of its endowment. Today, less than 15 per cent of its budget comes from there. Since most of the balance comes from the annual Parliamentary grant, there is a concern that the political independence intended by the enabling legislation is no longer reinforced by financial independence.

his report accompanies the annual report that the Council submits to Parliament. Included in a supplement to the annual report is a complete list of the grants given during the year, with the names of recipients and the amount awarded to each.

These arrangements establish considerable ex post facto accountability, and the Council does not object to it nor to the control exercised by the government in appointing Council members and allocating its budget. But the Council is currently extremely concerned about possibilities raised by the final report of the Royal Commission on Financial Management and Accountability (the Lambert Commission). That group made a number of recommendations with regard to the agencies it labelled 'independent deciding and advisory bodies', including granting agencies such as the Canada Council. Based on the assumption that 'the management of such agencies does not warrant a relationship between the agency and the Government differing from that of a department' (Royal Commission on Financial Management and Accountability 1979, 312), these recommendations raise the possibility of the Canada Council's being subjected to ministerial directives[2] and to the Financial Administration Act.

The Canada Council's position is that its autonomy is of paramount importance, and that it would be highly undesirable for government officials to have the power to decide which types of artistic activities will be supported (Canada Council, 1981b, 5-8). No changes will, however, be made to the Council before the Federal Cultural Policy Review Committee (the Applebaum-Hébert Committee) has submitted its report, which is expected before the end of 1982 and is likely to favour the Council's desire for autonomy. In any case, the Lambert Report retreated from its basic position by recognizing that the budget approval process is not an appropriate instrument for controlling the policies and direction of independent deciding bodies and that the special nature of some agencies does create a need to vary the standard accountability regime.

Film program

The Canada Council's arts programs support individuals and organizations

2 The chairman of the Canada Council, in response to the Lambert Report, has argued that 'the use of directives would not increase accountability but diminish it, since actions which might otherwise be rightly questioned would be ruled beyond dispute by reference to the directives' (Moore 1980b, 8).

involved in film as well as dance, music, visual arts, theatre, writing, publishing, and the broadcast media. Grants to individuals are awarded with the assistance of a jury of accomplished artists from the milieu, who evaluate the written applications and the previous work of applicants. An advisory panel, consisting of twenty-six members representing all artistic disciplines and regions of Canada, meets four times each year to review the jury recommendations on grants to individuals and to discuss policy issues. The Council's twenty-one appointed members are, however, responsible for the final decisions on all grants.

The Council is neither a producer of films like the National Film Board[3] nor a financier of commercially oriented productions like the Canadian Film Development Corporation, and its role in film is distinct from that of other federal agencies. In its own words:

> Canada Council's primary objective is to stimulate intellectual and imaginative expression using the technology of filmmaking. Canada Council is not confined by a mandate to interpret Canada to Canadians. Nor is it restricted by an implicit requirement to make a return on its investment. (Canada Council 1981a, 4)

The film program provides assistance to individuals, organizations, and productions through various kinds of grants (see Table 2). Awards to individual film artists are provided under five grant programs, all of which employ the jury system: A and B grants, which support professional filmmakers for periods of four to twelve months while they work independently on creative projects; special project grants of up to $4000 to provide independent filmmakers with funds to cover the expenses, for example, of dubbing works in the other Canadian official language for a film festival; noncompetitive grants, for activities such as travel to noncommercial film festivals and seminars; and production grants to provide independent professional filmmakers with up to $40,000 to cover total or

3 An exception to this policy was a 1981 coproduction by the Canada Council and the NFB of a documentary profile on Canada's professional dance companies. The Council contributed $176,000 towards such expenses as the artists' fees and the transportation costs involved in filming the dance companies on location but did not otherwise function as a producer in the usual meaning of the term.

TABLE 2
Canada Council film program expenditures 1980-1

Grant program	Amount
A grants	$ 38, 500
B grants	35, 532
Noncompetitive grants	104, 715
Production grants	477, 985
Grants to organizations	608, 300
Special projects	12, 742
Communications fund	4, 907
Total	$1, 282, 681

NOTE: Although an occasional feature-length film is assisted by a Council grant, such assistance accounts for a small percentage of the film program expenditures.

SOURCE: Canada Council (1981)

partial costs of a specific film.[4]

In order to avoid duplication of services available from other federal agencies, film projects are not eligible for Canada Council assistance if they are being produced or sponsored by the NFB[5] or the Canadian Broadcasting Corporation or assisted by the CFDC. Since the films the Council supports are generally not commercially oriented, government subsidies through the capital cost allowance do not apply to these independent productions. However, provincial agencies frequently make grants to productions being aided by the Council.

The noncommercial orientation of Canada Council's film program does not imply that no one is interested in viewing the resulting works. Many have won important awards and have been exhibited on Canadian and foreign television. Among the recent successful films produced with Canada

4 Only filmmakers who have directed at least one film or established a professional reputation in the visual arts may apply for a film production grant. Other filmmakers may be eligible for a grant under the Explorations Program, which is not restricted to professional artists.

5 The NFB sometimes assists Council-funded independent productions by making technical services available, but it does not thereby attain rights to these productions.

Council grants are Alligator Shoes (Clay Borris), Toller (Pen Densham and John Watson), and Woven in Time (Robert Wishlaw). A trend towards support of more ambitious (and saleable) projects can be inferred from the available data. In 1974-5, sixty-three production grants were made for a total expenditure of approximately $242,900. Although the expenditure rose to just under $478,000 by 1980-1, only thirty-five grants were made. Since inflation can not wholly account for a rise in the average grant from $3,855 in 1974-5 to $13,657 in 1980-1, additional factors must be partially responsible.[6]

The Canada Council currently provides operating grants to more than twenty nonprofit film organizations. Known as 'co-ops', these organizations share artistic and technical resources for the production, distribution, exhibition, and conservation of Canadian films. The Council is committed to their survival in order to ensure that the productions it assists will be distributed across the country. The Council also maintains a small 'communications fund', which permits nonprofit film organizations to discuss matters of common interest at a variety of conferences.

The instrument

The Canada Council was modelled on the Arts Council of Great Britain, the first independent national arts council. Although it is not arguing for greater autonomy than it now has, the Council is highly committed to the principle, embodied in the Massey Report, that it should not become a department of government in any sense.

Its new director, Timothy Porteous, recently identified the elements essential to an arm's-length arts council as: (1) the independence of Council members and chief executive officers, who are appointed by the government but must put the Council's interests ahead of loyalty to the government; (2) the attitude of ministers and members of Parliament, who must understand that although they can make representations to the Council, its decisions and policies, unlike those of a department, are not

6 In 1979-80, twenty-three of the thirty-four films assisted ran thirty minutes or longer. Approximately the same number were the same length as a television time slot (just under thirty, sixty, or ninety minutes). Conversely, many experimental films are much shorter than thirty minutes and are not produced with television requirements in mind.

subject to their authority; (3) the responsibility of the Council, not the government, for the 'intermediate order of judgments' (in other words, although the government decides how much tax money should be allocated to the Council's annual grant, it should have no power to control the internal allocation of the Council's budget); and (4) the freedom of Council spokesmen to comment on matters of cultural policy, even when their views conflict with government or opposition policies (Porteous 1981, 7-17).

Section 13 of the enabling act explicitly declares that the Council is not an agency of the Crown and its members and employees are not public servants. However, the theory of independence has come under significant strain at times. Each year, the Council must provide the Treasury Board with sufficient information to construe its financial requirements, including information about specific programs.

As a demonstration of the fragile foundation on which the Council's autonomous status rests, consider the incident of the Art Bank.[7] The annual grant from Parliament is not supposed to be for particular programs, but in 1972, earmarked funds were given to the Council for a new program to assist contemporary Canadian artists through the purchase and public display of their works. The Art Bank prospered, and many of the works it bought were rented to government departments and nonprofit institutions. Then, in 1978, as part of its overall policy of spending restraint, the government announced that it would cease to fund new purchases by the Art Bank. The Council, however, did not accept the government's attempt to decide which of its programs should be cut, and it continued the Art Bank by reallocating funds from other Council activities.

Direct government grants (the manner in which some provinces support the arts) are the principal alternative to the instrument of an independent council. Fundamental to the recommendations of the Massey Report is the principle that the arts should not be controlled by the government. Rather, granting decisions should be made by an expert body, with the advice of successful professional artists. Although the present jury system has been criticized as too 'inward-looking' (Edinborough 1978) - in other words, as having jury members and criteria that

7 See also Fulford (1982, 34), who concludes, 'The council has become - promisingly, but also dangerously - a part of the complicated, endlessly compromised apparatus of government.'

are too narrowly selected - the overall mechanism is generally considered to be the most superior manner of obtaining judgements based upon standards of quality rather than political or ideological bias (Canada Council 1978, 22).

An alternative to direct government support of the arts would be an increase in tax incentives for contributions from corporations or individuals. Although such an arrangement would be welcomed by the arts community as an additional form of subsidy, it would not be satisfactory as a replacement for the independent arts council. Sustained support of the arts is currently considered a matter of government responsibility, which necessitates the existence of a permanent granting agency.[8] Without the support of the Canada Council, arts organizations would be forced to expend a disproportionate share of their energies on fundraising and would be subject to 'even wider and less predictable fluctuations in revenues from year to year than under the present system' (Canada Council 1981b, 19). Although well-established arts institutions in prosperous cities might be able to take full advantage of tax incentives for private contributions, independent artists and less-established groups would not gain.

A more fundamental question than the choice of instrument to promote the arts in Canada is the issue of whether the federal government should dismantle or diminish its role in culture. One could point to the fact that organized arts funding by provinces (for example, Saskatchewan) and municipalities (for example, Montreal) predates the formation of the Canada Council. A national arts body was created largely in response to concerns about national unity and international prestige. These goals are currently even more politically prominent than they were twenty-five years ago, so it would be highly unrealistic to expect Ottawa to hand over total responsibility for culture to the provinces.

Moreover, a diversity of funding sources - three levels of government, private citizens, corporations - is generally considered to be essential to the maintenance of artistic freedom. Although some efficiency gains could probably be realized by assigning various segments of arts support exclusively to one level of government, this type of managerial

8 However, the Council's annual appropriation has suffered a gradual decline in terms of constant dollars since 1975.

coherence could lead to pernicious results (Bartlett 1981, 8).[9] The absence of alternative sources of support would exacerbate the potential for political influence in funding decisions.

The Canada Council's major contribution to the film industry is the fostering of the artistic growth and technical skills of filmmakers, many of whom have made significant contributions to the commercial production sector. However, it is not appropriate to characterize the Council's film program as an inexpensive national graduate school of film production, since many senior artists prefer to remain noncommercially oriented and rely heavily upon grants for ongoing support of their work. These direct subsidies are thereby directed towards a sector that is well outside of the mainstream of commercial activity and constitute perhaps the most obvious form of investment in the cultural development of the country.

9 For example, a few Quebec artists have attributed their failure to receive grants from their province to their political beliefs.

5

PROVINCIAL AND MUNICIPAL PROGRAMS

Provinces and a number of municipalities across the country provide assistance to filmmaking. Space limitations prevent a detailed examination of these numerous and varied programs, but a quick survey is useful. The programs include both grants to promote filmmaking as an art form and instruments to develop the film industry.

Arts grants

All the Canadian provinces currently recognize film as an art form and provide some funding for it, although their instruments differ. In the preceding chapter we noted that governments can fund the arts either through an independent arts council or directly by a department. The arm's-length model is currently represented by the independent councils or boards of Ontario, Saskatchewan, Manitoba, and Newfoundland. Other provinces, in addition to most municipalities, prefer to control the allocation of arts grants directly, though they usually employ the advice of arts experts.

Funding at arm's length

Unlike the pattern in many other countries, including Britain and the United States, provincial and municipal arts councils and departments receive no funds from the federal government or the Canada Council.[1]

1 In the United States, the National Endowment for the Arts, established in 1965, makes block grants to state, regional, and local arts councils as well as providing grants directly to various arts organizations, institutions, and projects. This structure is reflected on another level in Ontario, since the Ontario Arts Council does provide regional and local arts councils with support for operating costs and specific programs. In 1979-80, the arts councils of Richmond Hill, Sault Ste. Marie, Windsor, Guelph, and Hamilton were among those that received OAC grants.

This separation of the cultural activities of cities, provinces, and federal agencies is often pointed to as a matter of fundamental importance (Lussier 1979, 7). However, it should be noted that many jurisdictions in Canada give only limited funding to their arts councils. The Manitoba Arts Council, for example, operated in 1979-80 on a total budget of approximately $1.3 million; 35 per cent of its funds came from the province and 65 per cent from its share of the Western Lottery's net income. Its annual report lists grants of $1,500 to a co-operative group for a series of production workshops and $11,180 divided among eleven filmmakers to complete films or attend conferences, for a total film-support budget of only $12,680. For the same year, the operating budget of the Saskatchewan Arts Board was under $1.5 million. The annual report notes that the Board initiated the preparation of a film policy during 1979-80 but does not reveal the extent to which filmmakers were among those assisted by the approximately $27,000 it gave in 'visual arts' grants.

The Ontario Arts Council's much larger budget reflects both the province's greater population and its concentration of cultural activities. In 1979-80, more than one thousand organizations, including theatres, art galleries, publishing houses, and orchestras shared a total of $9,310,534 in operating and project grants; $53,160 of it went to nine film-oriented organizations, such as distribution centres and festivals. Individual artists, including fifty-two filmmakers and ten screenwriters, received grants totalling $2,133,632. During the same period, four filmmakers were among the 252 professional artists who received grants under the Creative Artists in Schools program, which brings creative artists into direct contact with students. The Council also administers seven endowment funds that support the arts and is involved with a variety of special programs. For example, its Experience summer program provided 304 young people an opportunity to gain practical work experience with arts organizations and professional artists (including a limited number of positions in the field of film) during 1979-80 (Ontario Arts Council 1980).

Like the Canada Council, the Ontario Arts Council was formed in response to representations by arts organizations and individual artists. In 1960, an umbrella organization of the cultural sector, the Canadian Conference of the Arts, formed a committee to pressure the provincial governments to follow the example the federal level had set a few years

earlier in establishing an independent arts council. John Robarts, then Ontario minister of education, was one of the strongest supporters of the idea; when he became premier, he introduced Bill 162, an act to establish the Province of Ontario Council for the Arts. It passed in late April of 1963.

The artists received precisely what they desired, an arm's-length agency modelled closely on the Canada Council and the British Arts Council. The OAC's twelve members, not provincial politicians, are the final arbiters of the allocation of grants. The design of the instrument protects politicians from being hounded by voters and artists and increases the appearance of fairness by employing a jury system of outside advisors as well as a professional staff trained in the arts. Thus, 'the arm's-length principle has a double benefit: it protects the agency from becoming a rubber stamp, and it protects the politician from becoming a rubber target' (Moore 1981, 5).

The OAC's chairman, vice-chairman and ten other members, drawn from all regions of the province, are appointed by the government. All serve without remuneration, except for reimbursement of certain expenses. The full group meets four times a year, usually for periods of three days, to consider grant requests. Each month, a seven-member executive committee meets to consider emergency assistance and other short-term grants. Since the Council decides some 3,000 grants a year, it is assisted by a permanent staff that currently numbers about fifty. Although staff recommendations are usually accepted, the Council often alters the amount of a grant or adjusts its conditions (for example, reception may be conditional on the grantee's raising of matching funds from other sources).

An annual report is submitted to the minister of citizenship and culture, who in turn submits it to the legislature. All accounts of the Council are audited annually by the provincial auditor. This financial accountability is not accompanied by 'strings' of any kind; unlike the case with the Canada Council, the autonomy of the OAC has never been tested by a confrontation. In addition, no minister has ever been successful in an attempt to influence the internal allocation of Ontario Arts Council grants.

The criteria for grants to individual artists, including filmmakers, focus upon the artistic quality of the work and the experience of the individual. Filmmakers always support their applications with a sample

sixteen millimetre film. Although the Ontario Arts Council hopes that audiences for the work of the supported filmmakers will develop along with the artists' creativity, they are not pressured to 'go commercial'. Many talented young filmmakers assisted by OAC grants eventually do branch out into commercial ventures, but others are welcome to return repeatedly to the Council for support for work of a more experimental nature.

As we have noted, independent arts bodies such as the Ontario Arts Council and the Canada Council can point to a variety of good reasons for government to avoid direct involvement in the funding of the arts. The paramount concerns are the freedom of the artist and insulation of governments 'from an area of controversy where their intervention has almost always proved awkward for the arts and for the governments themselves' (Moore 1980a, 8). Generally, the autonomous arts councils have proven successful instruments both politically and functionally. Their most vocal detractors are usually, as could be expected, constituents who either have been refused access to funds or feel that they should have received more money. Other, less directly affected critics believe that a funding body's decisions must reflect the priorities of government, and that each council should be made more accountable to the government that funds it.

Direct funding

Indeed, municipal and provincial politicians are directly responsible for much of the arts funding across Canada. Even in jurisdictions with an independent arts council, substantial decisions are reserved for the government. In Manitoba, for example, the provincial arts council deals at arm's length, but the Department of Cultural Affairs and Historical Resources directly funds many institutions, such as the Winnipeg Art Gallery. Similarly, although the Ontario Arts Council is the province's principal arts support agency, the Ministry of Citizenship and Culture provides direct funding to many organizations through a variety of programs, including Wintario grants.[2] In 1981-2, the ministry (then known

2 Wintario supports film programs such as the Super 8 Film Festival in Toronto but no longer makes grants available for individual film projects; it eliminated its film program during 1978-9, because of concerns about duplication of OAC programs. In addition, there was little demand for film grants because nonprofit organizations found it difficult to raise 50 per cent of the budget, as required under Wintario's matching-funds principle.

as Culture and Recreation) spent about $200 million on cultural and recreational activities (including its own administrative costs); $48 million of those funds went to its cultural agencies.[3]

Most large municipalities, including Toronto, also make direct grants; volunteer arts professionals make recommendations to city council on the disposition of available funds, but politicians make the final decisions.[4]

At both the provincial and municipal levels in Canada, the potential dangers of governmental interference with direct funding seem, in practice, to be negated by the availability of a variety of funding sources. For municipalities, the focus of cultural grants is largely concentrated on arts institutions rather than individual artists. With limited resources at their disposal, local politicians must support high-profile activities in order to attract voters interested in the arts. Film festivals will, therefore, receive the support of the city, whereas individual filmmakers generally will not.[5] Economic as well as political factors enter into this decision, since politicians are particularly concerned about enhancing the attractiveness of the city to all who use it, including tourists. Local hotels, restaurants, bars, taxis, and so on all benefit from increased use of a city. A grant to a cultural institution such as a theatre or a film

3 In 1982-3, its eight cultural agencies will receive grants of more than $50 million, of which the largest grants go to the Ontario Arts Council ($16.5 million), TV Ontario ($16.5 million), and the Royal Ontario Museum ($11.8 million)(information provided by Arts Branch, Ministry of Citizenship and Culture).

4 The Toronto Arts Council was established by Mayor David Crombie in 1972. Its members, who are appointed by City Council, meet monthly to review the merits of each application for grants. In 1980, $180,000 in grants was divided among ninety-two organizations. In 1981, eighty-seven organizations shared a total of $238,170, of which $10,450 was directed to film festivals (Festival of Festivals, $6,000; Toronto Super Eight Film Festival, $1,200) and other nonprofit film groups (Academy of Canadian Cinema, $500; Canadian Centre of Film for Children, $750; and The Funnel, $2,000). Cultural grants are allocated to organizations for specific activities held in the City of Toronto. Although individual artists, including filmmakers, resident in Toronto are also invited to apply for grants, very few such grants have been allocated in recent years.

5 See note 4. The Municipality of Metropolitan Toronto has not provided any funds for the making of films but has supported the Festival of Festivals since its inception with grants of $10,000, $15,000, $35,000, $45,000 from 1978 to 1981 respectively. Metro has also supported the Harbourfront film program and the Canadian Filmmakers Distribution Centre with small annual grants.

festival thus has far greater political and economic returns than would a grant to an individual artist. Both the image of city hall and the economic ripple effect are enhanced by high-profile institutional grants.

Other instruments

Provincial and municipal governments in Canada have only limited capabilities to develop methods of subsidizing the arts other than by grants. For example, only the federal government could amend the federal Income Tax Act so as to encourage businesses and individuals to make contributions to arts organizations.[6] The importance of indirect support to the arts should not be underestimated; in the United States, tax preferences for the arts, including the tax deductibility of charitable gifts and bequests, have been estimated as worth up to $800 million annually (Netzer 1978, 52). However, this type of support could not be relied upon exclusively to provide a consistent level of support to the arts of all types and in all regions of Canada.[7]

A few American cities have experimented with designated taxes to assist the arts. In San Francisco, for example, 42 per cent of the 6 per cent tax on hotel rooms is awarded to cultural institutions, and in Dade County, which covers the Miami area, 20 per cent of tourist taxes paid by hotel guests are allocated to cultural programs and events. The benefits of these systems are not entirely clear, however, since they make periods of slow tourism penalize arts institutions twice - through both lower attendance and lower grants.

Industrial development

Assistance to the film sector is only a small part of provincial and municipal subsidies to the arts. Some jurisdictions have also developed

6 A suitable amendment could take the form of allowing such gifts to be deducted from taxes payable (as is now the case with political contributions) rather than from taxable income. Provincial tax credits could also accomplish this end.

7 One of the concerns of federal and provincial policy-makers is that grants should be widely dispersed geographically, rather than concentrated in a few centres. Under any tax regime, organizations in large urban areas are better able to attract donations. Independent artists are also unable to rely upon private donors.

instruments expressly directed towards the development and promotion of film as an industry.

The provinces of Ontario, Alberta, British Columbia, and Quebec have been the most aggressive in attracting film production activity. For the most part, they compete with forty-two American state film commissions for a share of the production funds that have, in recent years, moved from Hollywood studios to location shooting of movie and television scripts. Economic benefits, particularly from employment, are the motivating factor for the film commissions. They co-operate with production companies by helping to cut red tape (by providing or obtaining permits and serving as a liason to private and government agencies), frequently recommend suitable locations, and publish directories.

Film industry development in Ontario

In Ontario, responsibility for development of the film industry is shared between the Arts Branch of the Ministry of Citizenship and Culture, and the Industrial Development Branch of the Ministry of Industry and Trade. Although the Ministry of Citizenship and Culture is, in theory, responsible only for the cultural aspects of the film industry, in practice it has also been involved in its industrial development. The Cultural Industries Branch, established in 1975 and absorbed into the Arts Branch in 1982, has developed policies and programs to assist the film, recording, commercial theatre, book publishing, mass paperback, and periodical industries. Since none of these is intentionally nonprofit, the emphasis has been on short-term promotions rather than permanent subsidy programs.

An interesting effort by the Ministry of Culture and Recreation (as it was then known) was a five-month promotion of commercial Canadian films in 1979. Called the Half Back Program, it made losing Wintario lottery tickets worth 50 cents each, to a maximum of $2, off the price of admission to Canadian feature films.[8] Approximately 200,000 people took advantage of the discount offer. The purpose of the program, as announced by the

8 The Half Back Program was originally introduced in 1978, for twelve weeks, to encourage the purchase of Canadian books and magazines. In 1979, the program was redesigned to support Canadian feature films and

minister, was to 'encourage greater awareness and appreciation of Canadian achievements' in feature film production (CineMag 15 [March 1979]: 15). Two Canadian movies, Meatballs and Jacob Two-Two Meets the Hooded Fang, benefited the most from the program. This result suggests some of the pitfalls inherent in such a program. Although Half Back was intended to be an incentive to exhibitors to show Canadian films that would not normally be heavily promoted by distributors, Meatballs was given an enormous publicity campaign throughout North America by Paramount, its U.S. distributor. Not only did it not need the ministry's assistance, but the principal winner was a foreign-owned company.

Nevertheless the Half Back Program did increase provincial aid to the industry. During the year it was channelled towards promotion of Canadian feature films, total direct subsidies to film under the auspices of the Ministry of Culture and Recreation amounted to $1,481,546, as follows: Ontario Arts Council, $581,445; Art Services Branch (including Wintario), $167,701; Cultural Industries Branch (including the Half Back program and festival support), $732,500.[9]

Policy options regarding the film industry in Ontario are explored by the Ministry's sole film officer, who also performs a liason and consultation function with the industry as well as with the Industrial Development Branch, Toronto's Film Liason Office, and federal agencies such as the CFDC. He is also responsible for supervising the support of film festivals. In 1980-1, $140,000 was divided among the Festival of Festivals, the International Animation Festival, and the Academy of Canadian Cinema (for the broadcast of the Genie Awards).

The Ministry of Industry and Trade's involvement in assisting the film industry originated with a 1973 brief submitted to what was then called the Ministry of Industry and Tourism by an exploration team chaired by John F. Bassett. That report recommended the establishment of a film office that which would administer a quota system for feature films, classify films (rather than censoring them) as to audience suitability, support a major

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recordings. For the latter six months of 1981, the Half Back promotion was directed to the live performing arts and paperback books by Canadian authors.

9 Statistics provided by letter by the Ontario Ministry of Culture and Recreation, June 1981.

film festival, oversee a provincially supported film school, administer a script development and preproduction fund, and serve as an overall film policy and liason agency (Bassett 1973). However, the Film Office established in 1974 is not an autonomous unit and has the much more limited mandate of encouraging film production in Ontario and assisting producers in marketing Ontario-made films in foreign markets. No quota, film school, or development fund was ever established, and film censorship has remained entrenched at the Ontario Theatres Branch of the Ministry of Consumer and Commercial Relations.

The film industry development program has been directed to the producers of feature films and, to a lesser extent, to producers of television shows. Major activities have included participation in international trade shows, a media and direct mail campaign promoting the advantages of Ontario as a film location, support for the business conference of the Toronto Film Festival, and provision of location scouting services to producers. Excluding salaries and overhead, the total 1980-1 budget for the film industry development program was only $135,000, which is a miniscule proportion of the estimated economic value production activity brings the province.[10] One full-time consultant to the Industrial Development Branch, together with one officer on a part-time basis, carry out the film program. In the fall of 1981, the minister announced plans to supplement the program by creating an office of film, video, and software development; however, no specific programs, structure or budget were approved as of May 1982. An alternative proposal submitted to the government in 1981 suggested establishing an office that would centralize in a separate

10 Figures provided by the Industrial Development Branch show that of $360 million worth of feature productions filmed in Canada during 1979-80, half were shot in Ontario. The value of television and commercial production in Ontario would bring the total to over $450 million, to which the branch applies a multiplier of 3.5. Without attempting to analyze the validity of the multiplier (some state film commissions use an unreasonably high multiplier of 6), it is apparent that the film industry deserves attention from the province. In terms of the employment benefits of production activity, the ministry has estimated that 1800 new jobs were created in Ontario as a direct result of features filmed in the province in 1980. Although this may not be impressive when compared the economic benefits of larger industries, such as mining and tourism, the impact of new technologies (videodiscs, pay-TV, and so on) make the film production industry a prime candidate for growth.

unit the province's major film industry programs (that is, incorporate the film responsibilities of the two ministries' branches). This proposal cannot be dismissed as mere bureaucratic empire-building, especially given the other provinces' competitive attitudes towards attracting productions.

Film industry development in other provinces

A number of provinces encourage the film industry. Alberta, for example, recently established a Motion Picture Development Corporation to promote the development of the film industry in the province. The Corporation will administer a fund to provide loans or guarantees of up to 60 per cent of a film's preproduction budget. To date, although Alberta investors have participated heavily in Canadian feature films, most of this investment capital has left the province. The Corporation is intended to help to rectify this imbalance and is envisaged as a 'short-term support vehicle which will self-destruct with success' (Brese 1977, 10). Although the experience of the CFDC suggests that it may be overly optimistic to expect self-destruction, the CFDC model also proves that such an instrument can be highly effective in stimulating film production. Another encouraging development for the Alberta film industry is the construction of a \$20-million studio complex to be completed in 1982; it is being built on 800 acres of land annexed to the City of Calgary for the purpose.[11]

In Quebec, legislation was passed in 1975 to establish the Institut Québécois du Cinéma. Since then, an average of \$4 million annually has been pumped into the Quebec industry by way of the Institut's grants, loans, and investments. Because the market for Quebec's French-language films is limited, the Institut has paid particular attention to their distribution within the province; for example, it has rented a Montreal theatre in order to provide an outlet for lower-budget films that might otherwise not be exhibited. However, big-budget English-language features have also received financial assistance from the Institut, which suggests that the province's special concerns about its cultural development have not entirely overriden economic self-interest.[12] Quebec is currently developing a new

11 The venture is privately financed, but significant government co-operation facilitated it.

12 However, a 1980 bill that may become law if reintroduced would allow only one English-language print of a film into the province. All

cinema law, whose contents are being recommended by a task force created by the Ministre des Affaires Culturelles. During public hearings held in late 1981, many groups representing the production and other sectors recommended that the province increase its political and financial commitment to the film industry.

British Columbia's Film Promotion Office, which is within the Ministry of Tourism, has been attracting productions to the province since 1978. The government's efforts have been rewarded with substantial success, as evidenced by a leap in production spending from $12.5 million in 1978 to $53.2 million in 1979.

On a smaller scale, Nova Scotia's Film Resources Office mirrors the promotional efforts of Ontario, Alberta, and B.C. Saskatchewan, which has thus far attracted little production activity, currently maintains a film promotion office and is considering the establishment of a provincial agency modelled upon the CFDC.

Municipal services

Municipal film-liason offices, which have been long established in at least fifteen U.S. cities, have recently been formed in Calgary, Montreal, and Toronto. Although Vancouver does not have one, the B.C. Film Promotion Office is located there, rather than in Victoria, and effectively performs the same functions. These offices compete for film location business, attempt to minimize inconvenience to local residents and businesses when films are being shot, and arrange for permits and city services. Film production is considered to be of growing importance to local economies[13]; a multiplier of 3.5 is often used to indicate the economic impact of film production dollars.[14] However, movie-making's potential inconveniences

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other prints would have to be dubbed (a process that takes six months) or subtitled (which takes three months and is generally unsatisfactory to viewers). The net result of this culturally inspired policy would likely be that nearly all films exhibited in Quebec would be French-language; most of the exceptions would be Hollywood blockbusters distributed by the majors that could afford to absorb the cost of dubbing.

13 Although 1981 was not a strong production year for feature films in Canada, other types of production retained a healthy level.

14 On this basis, a report submitted to the City of Toronto Executive Committee by the commissioner of planning and development (11 February 1981) indicated that the economic impact of feature filming in Toronto could amount to over half a billion dollars in the past two years.

(caused by production vehicles, lighting generators, and closed streets) make it necessary for city officials to temper their enthusiasm with guidelines concerning insurance, hours of filming, notice to affected residents, and so on. Film liason officers in Canada do not engage in much industrial development planning, which is handled by the various provincial agencies responsible for film policy. However, their 'nuts and bolts' work is essential to any municipality that hosts a significant amount of production activity.

A comment

All this vigorous competition is rooted not only in economic self-interest but also in the political attractiveness of associating one's government with a glamorous, high-profile industry. In the case of Ontario, however, which accounts for 40 per cent of the English-language Canadian market and is the home of most of the major film industry trade unions and associations,[15] the current lack of focus for government policies serves neither the industry nor the symbolic purposes well. A film office incorporating the current film-related functions of the Industrial Development Branch and the Arts Branch, as well as a financing fund along the lines of the Institut Québécois, could more effectively co-ordinate the province's programs and policies.[16] As an alternative to a financing fund, consideration might be given to making the existing incentives of the Small

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However, the open economy of a city (that is, the enormous leakages) makes a multiplier of 3.5 far too high. If we wanted to engage in the multiplier game, we would choose 1.5 as a more appropriate figure.

15 Association of Canadian Movie Production Companies, Council of Canadian Filmmakers, Canadian Film and Television Association, Canadian Association of Motion Picture Producers, Association of Canadian Television and Radio Artists, Directors Guild of Canada, Cinematographers (International Alliance of Theatrical Stage Employees) Local 644, Association of Canadian Film Craftspeople, Canadian Film Sound Society, Academy of Canadian Cinema, National Association of Broadcast Employees and Technicians, Canadian Motion Picture Distributors Association, and others.

16 A Ministry of Culture and Recreation report suggested that such an office could be a subsidiary of a proposed cultural industries development office. Grants for noncommercial projects would continue to be allocated by the Ontario Arts Council.

Business Development Corporations Act available to film production activities.[17]

17 Corporations registered under the act are eligible for grants and tax credits. An eligible investment is one made in a small business (defined as a corporation having not more than 100 employees) that pays 75 per cent or more of its wages and salaries for operations in Ontario. However, activities 'that involve the production or recording of pictures or sound or other program material on motion picture film or video tape' are now excluded from the definition of eligible investments under the regulations.

6
THE CAPITAL COST ALLOWANCE

Instituted in 1975, the capital cost allowance is a program whereby investors in films can gain considerable tax advantages, and it is generally credited with having greatly increased the private capital available to the Canadian film industry. Before considering the complex history and details of the regulations or examining their effects it is worth considering the nature of the instrument involved.

The concept of tax expenditures

Tax expenditures can be simply defined as 'government revenues foregone through special provisions in the tax system which are specifically designed to provide incentives or relief to certain activities or individuals' (Smith 1979, 1). These indirect expenditures, which are often interchangeably termed 'tax subsidies' or 'tax incentives', are alternatives to direct public spending and other policy instruments. For example, special features of the federal income tax system encourage Canadian taxpayers to make charitable and political contributions and to invest in natural resource exploration and shares of Canadian corporations. Tax expenditures are not homogeneous in either form or purpose. Deductions, exemptions, credits, deferrals, exclusions, and preferential rates are all forms of tax expenditures. As to purpose, a broad spectrum of public policy objectives is achieved through this class of instrument. Each tax expenditure requires an independent analysis in order to determine whether or not it is the most appropriate method of achieving its desired goal.

The first tax expenditure budget was published by the U.S. Treasury Department in 1968; since 1974, one has been required annually by law. The Canadian Department of Finance did not publish a federal tax

expenditure account until 1979. The department's report stated, 'The reason a tax expenditure account for Canada has not been produced before this time has been a lack of adequate and appropriate data' (Department of Finance 1979, 2). Indeed, the available data remains incomplete. Among the significant tax expenditure items yet to be estimated are the tax preferences in the form of nontaxation of various fringe benefits of employment, a number of important business incentives, such as the deferral of capital gains on intergenerational transfers of small businesses, and certain incentives to the resource sector.

Neither of the two prominent tax incentives in the cultural field, the 100 per cent capital cost allowance for certified Canadian films and the nontaxation of capital gains on gifts or sales of property to a designated institution under the Cultural Property Export and Import Act,[1] have been precisely quantified. However, the Department of Finance in its December 1980 update of the tax expenditure account estimated the cost to the federal income tax system of the write-off for Canadian films as $15 million for 1979. A report prepared at the Institute for Policy Analysis for the Federal Cultural Policy Review Committee (Bird, Bucovetsky, and Yatchew 1981) concluded, subject to a number of important caveats, that the same incentive's estimated net cost to the federal and provincial governments combined was probably no more than $14.5 million in 1979, in comparison with an estimated $18 million for the capital gains tax exemption of property certified by the Canadian Cultural Property Export Review Board.

Surrey (1979, 7) argues that 'the use of tax expenditures does

1 By section 39(1)(a) (i.1) of the Income Tax Act, the disposition of an object that meets the criteria set out in the Cultural Property Export and Import Act to a designated institution or public authority in Canada is not included in a taxpayer's computation of his capital gain for the year. In addition, by section 110(1) (b.1), the entire value of such gifts may be claimed as a deduction, and this deduction is not subject to the general 20-per-cent-of-income limit for charitable donations. A separate tax expenditure, the write-off of art works and antiques bought by business and professional firms at 20 per cent per year, was eliminated by the budget of 12 November 1981 for works purchased after that date. Since art works and antiques usually appreciate in value, there was little justification to allow their cost to be deducted against the firm's income. As a concession to Canadian culture, the budget retained the write-off with respect to the first purchase of art produced by living Canadian artists.

inevitably seem to involve a lack of control over government spending and a consequent budgetary inefficiency'. The logical first step towards increased efficiency is the identification of both the cost of the tax expenditures and their principal beneficiaries. Surrey (1979, 7) also points out that the use of tax expenditures to provide assistance is highly protective of the persons or activities benefited, since 'reducing the regular budget is called budget efficiency or control over government spending and is generally applauded [but] reducing tax expenditures is called tax reform and is generally strongly opposed'.

The Department of Finance's original report recognized that tax expenditures have been growing in both amount and number in recent years, particularly in the area of economic development and support.[2] Restraint in direct spending combined with expansion of tax expenditures allows politicians to meet policy objectives while superficially appearing to control government spending. However, 'financing new or expanded tax expenditures requires either a larger deficit, program cut-backs, or a higher general level of taxes' (Department of Finance 1979, 28-30). In other words, although the Canadian public may temporarily be fooled into believing that they can have their cake and eat it too, ultimately a pervasive substitution of tax expenditures for direct spending is most likely to resemble an enforced diet.

Although it is easy to be cynical about the political rationale behind the use of tax expenditures, one cannot ignore the legitimate efficiency arguments that support their use in certain circumstances. Feldstein (1975) develops econometric support for the premise that a tax subsidy is often a more efficient method of achieving a desired purpose than a direct expenditure. Steinmetz (1980, 345-7) identifies some of the superior technical qualities of tax incentive programs. Among these are the inherent objectivity of the tax system (minimizing the opportunity for political interference), the ability of tax incentives to provide broadly accessible aid to a given industry, and the ability of the existing tax bureaucracy to accommodate new programs (making an expensive new administration unnecessary).[3]

2 Maslove (1981, 248) estimates that federal tax expenditures are likely to exceed $16 billion in 1981, about 25 per cent of planned budgetary expenditures for 1981-2.

3 It should be recognized that every new program entails administrative costs, even if these are not readily apparent. However, it is also true that the 100 per cent capital cost allowance has not been admin-

Woodside (1979, 250) points out that the largest kind of tax incentive to business in Canada is that provided through the capital cost allowance system. This incentive was substantially reduced by the November 1981 budget, which limited the capital cost allowance deduction in the year an asset is acquired to one-half the normal write-off rate. The difference between the capital cost allowance under the Income Tax Act for a particular class of property and the rate of depreciation that would otherwise be determined by generally accepted accounting practices roughly determines the size of each tax expenditure. Since most of a film's revenues are normally earned within three years of the time it is produced, a capital cost allowance in the 30 per cent range for motion pictures would be appropriate under the matching principle. In fact, 30 per cent is the allowed rate for motion pictures and videotapes acquired by a taxpayer after 25 May 1976, other than those films or videotapes that fall into the category of a 'certified feature production', or a 'certified short production', for which a capital cost allowance of 100 per cent may be claimed.[4] However, the 30 per cent capital cost allowance is much more restrictive than generally accepted accounting principles would dictate, since the allowance is taken on a declining balance basis (thereby increasing the number of years over which the property is depreciated) and since the deduction is only allowed against certain types of 'leasing' income that few individuals earn.

Under a change to the 1981 budget, investors in certified films will be able to write off 100 per cent of their investment until 31 December 1982; thereafter, the capital cost allowance will be cut by half as is currently the case for other classes of property. Since the essential difference between certified films and other films is the level of participation by Canadians and the extent of costs incurred in Canada, the tax incentive is only available to films with a significant degree of Canadian content (although there is no requirement that the subject matter be Canadian).

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istratively expensive; two employees of the Canadian Film Certification Office largely carried out the certification process during 1975 to 1981, although the Department of Communications has recently said that additional staff is needed to monitor the program effectively.

4 See Income Tax Regulations, class 10(q) and class 12(n) and ss. 1100 (1)(a) and 1104 (2)(h)-(j)).

Tax incentives to the film industry: U.S., Australia, and Britain

Before discussing the Canadian capital cost allowance in detail, we now turn briefly to the experience of other countries in using tax incentives to promote the development of the motion picture production industry.

The United States

Before 1977, U.S. film investors could take advantage of two forms of tax shelters. Under the 'purchase' tax shelter, investors would buy a complete film from a producer for a price well above the film's actual cost. This investment would be heavily leveraged - that is, most of the purchase price would be provided by promissory notes rather than cash. The notes were inevitably 'nonrecourse', meaning that the investors' debt to the producer would be paid back only out of any profits earned by the film. (Otherwise, the producer would never be paid the sum promised by the notes, since the investors were not personally liable.) Investors would write off the entire purchase price of an unsuccessful film as a business loss, garnering a substantial tax saving by including the face value of the nonrecourse notes in the amount of the 'loss'.

The other kind of movie tax shelter, known as the 'production service company', also involved the use of nonrecourse notes. Here, private investors would contract with a production service company to make a film, using a small amount of the investors' cash and a large bank loan. The amount of the cash invested plus the amount of the loan created an immediate tax loss for the investors in the year of production. Although any revenues later received from the film had to be included in the investors' income in the year in which they were received, the investors enjoyed the benefits of a substantial tax deferral (Lees and Berkowitz 1981, 100-4).

By the 1976 Tax Reform Act, U.S. taxpayers are no longer permitted to take the amount of any nonrecourse notes as depreciation. Loss deductions are, therefore, currently limited to the amount of the cash investment plus any amount for which the investor is genuinely 'at risk'. Promissory notes must be 'full recourse' - that is, the taxpayer must be personally liable for the borrowed amount. In addition, the amount of the permitted deduction is reduced to the extent the taxpayer is protected

against loss by reimbursement agreements, such as revenue guarantees or indemnification agreements.

It is important to note that these U.S. tax shelters were not created by Congress as an incentive to the film industry. Rather, they were developed by lawyers and accountants within the overall framework of U.S. tax legislation. Although the U.S. film industry involves substantial financial risks, it has never been in danger of collapse or foreign domination and has always been able to attract private capital. Once the U.S. government realized the extent of the abuses perpetrated by film tax-shelter schemes, as well as the amount of tax dollars being diverted from the Internal Revenue Service, it enacted legislation specifically directed at eliminating the abuses.

The IRS had never wholly approved of motion picture tax-shelter deals and was vigorous in its review and prosecution where appropriate. Many cases from the pre-1977 era are still pending in the courts, and new indictments are not uncommon. For example, four men were indicted in early July 1981 on a 104-count charge; the complaints include the back-dating of film purchase contracts (in order to deduct nonrecourse notes before the 1976 legislative cutoff), the interposing of nonexistent European middlemen between the true vendors and the investors (in order to inflate the purchase price of the films), and the claiming of large nonrecourse notes that were never part of the price negotiated with the seller (Variety, 15 July 1981, 5). Although this case does not represent the conduct of all U.S. film investors, it does illustrate the reason the American government decided to restrict severely the availability of motion picture tax shelters.

The U.S. depreciation regulations, unlike the Canadian capital cost allowance, do not differentiate between domestic (U.S.) and foreign films. Therefore, U.S. producers need not obtain any special certification of their films in order for investors to be able to write off their investment for tax purposes. However, the only way a U.S. investor could obtain a write-off similar to the 100 per cent capital cost allowance on certified Canadian films would be to invest in a film with an expected revenue life of only one year (McIntosh 1979, 34). The reason is that individual taxpayers must use the income forecast method, whereby the owner of a film depreciates its cost, against his or her income from all sources, over the

period during which the film is reasonably expected to produce income. U.S. corporations, however, may use the sliding scale method of depreciation, under which a greater proportion of the production cost may be deducted in the first year than in succeeding years (in recognition of the fact that the first run of a film is the most important financially).

Neither of these allowable methods reveals an intent by the American government to create a tax incentive for film production. Both methods of depreciation simply allow the taxpayer to match expenditures with revenues realistically - that is, to deduct expenditures from income in a manner that reflects the productive life of the film asset.

The Economic Recovery Tax Act of 1981 does include an investment credit for new films, based on the amount of 'qualified U.S. production costs'. Taxpayers may elect either a 10 per cent credit subject to recapture or a credit not subject to recapture that equals 6.66 per cent of qualified U.S. production costs (see Biblin 1982, 89). The investment tax credit is, however, available only to the extent that the taxpayer is 'at risk', and it does not provide a significant incentive to invest in motion pictures rather than alternative property.

Great Britain

From August 1979 to March 1982, British corporations were able to write off their entire investment in films in the first year. The incentive was not available to individual investors, but there were few other restrictions. Beyond extending the capital allowance provisions to cover films, Inland Revenue offered no detailed guidelines. However, it was reported that producers, anxious not to appear to be exploiting the law, developed unofficial guidelines of their own (Variety 15 July 1981, 6).

For example, a conservative level of leveraging was generally adopted, with 25 per cent of the investment payable in cash (compared to as little as 5 per cent in the U.S. before 1977). The remainder of the investment was a loan repayable out of box office revenues. There was no 'at risk' requirement, as in Canada and the United States, and the entire investment was eligible for the tax write-off.

Like West Germany's tax-shelter laws, and unlike Canada's, the British tax legislation contained no strict requirements with regard to the use of native personnel or the level of expenditures incurred at home.

Although it was originally reported that producers were careful to maintain a significant level of British content in these areas, by 1982 it was apparent the program was being used to subsidize foreign products, and the financial loss to the tax base was substantial. The mainstream film industry, which had lobbied successfully for the incentive, may have felt a responsibility not to exploit the law, but subsequent investigations revealed that significant abuses, possibly by new entrants, had indeed been widespread. Consequently, the 100 per cent capital cost allowance for films was withdrawn on 9 March, subject to transitional relief for a two-year period for those films that qualify for the Eady Levy (see Chapter 7) by virtue of significant British content.

Australia

Australia currently has the world's most generous tax concessions to the film industry. Its new tax incentives for the film industry, in the Income Tax Assessment Amendment Bill of 1981, provide a 150 per cent write-off on investment in an approved production. In addition, profits are non-taxable to the extent of half the amount of the investment.

The criteria for approval by the minister of home affairs are not as strict as those for certification in Canada. Films must have significant Australian content in terms of subject matter, location of filming, nationalities and places of residence of the key personnel, and so on, but an overall analysis rather than a 'point' or numerical approach is used.

The tax deduction is available not in the year in which the investment is made, as in Canada, but in the year in which the owners earn revenue from the film. This provision was intended to prevent potential abuses whereby investors would put funds into a film that was unlikely ever to be made and take the 150 per cent deduction (<u>Variety</u> 24 June 1981, 5); in practice, however, since films are to be certified after production is completed (the former legislation had allowed certification before production had begun), such abuses would not be possible.

The Australian government also provides financial incentives to encourage exports. Eligible expenditures incurred in developing an export market for Australian films include costs related to advertising, trade fairs, overseas travel, release prints, dubbing, subtitling, freight, and insurance. Under the Export Development Grants Scheme, all such eligible

expenditures qualify for a rebate of seventy cents on the dollar, up to a maximum of $100,000. Under a companion program, cash grants reward export performance improved over previous years.

Australia's encouragement of the export of films is far more aggressive than Canada's. For example, our Export Development Corporation does not currently treat the film industry like other manufacturers by guaranteeing contracts with foreign distributors.

There is currently much interest in Canada concerning Australian films and the government incentives that encourage their production. One fact has puzzled our policy-makers is that although Australia's pool of creative and technical talent is smaller than Canada's, its film industry has apparently been more successful in attaining the cultural goals of the country.[5] The effect of the generous new incentives remains to be seen and will be observed carefully as alternative policies are developed in Canada.

The Canadian capital cost allowance

From 1954 to 1974, the Canadian capital cost allowance for investments in films was set at 60 per cent. Since very few feature films were produced in the country when this legislation was enacted, the 60 per cent figure was set largely in consideration of short films, such as documentaries and travelogues, which normally have brief lifespans and are expected to earn most of their revenues within two years. As the legislation did not distinguish between films with a significant degree of Canadian content and those without, there was no incentive to invest in Canadian productions as opposed to films produced elsewhere. However, the availability of the tax write-off, together with the aid of the Canadian Film Development Corporation, resulted in an increase in feature film production in Canada from 1968 to 1973.

5 Noteworthy Australian films include My Brilliant Career, The Chant of Jimmie Blacksmith, Breaker Morant, and Gallipoli. Martin Knelman, a Canadian critic, recently argued persuasively that at least a dozen Canadian movies released since 1970 are as good as the best Australian films (Toronto Life, January 1982, p. 21). Some Australian directors and producers feel that the tax-shelter laws are counterproductive to the continued development of an indigenous film industry (Globe and Mail, 2 March 1982).

During the early 1970s, groups of Canadian investors began to follow the U.S. example by forming limited partnerships for the purchase of films. A small proportion of the purchase price would be paid in cash, with the remainder payable only out of any revenues earned by the film. The Department of National Revenue attacked such deals vigorously, and several cases ended up in the courts.

The well-known Mandel case involved a taxpayer's appeal of a reassessment of his income tax for 1971, the year in which he and his partners, all members of a prominent Toronto law firm, invested in the purchase of a film. One-quarter of the purchase price (which was the cost of the production) was payable in cash; the balance was to be paid out of any available earnings of the film. The taxpayer claimed his share of the total price by way of capital cost allowance, including the amount payable when and if there were earnings. Revenue Canada's position, which was upheld by the courts, was that the noncash portion of the investment was only a contingent liability, which could not be properly included in the taxpayer's capital cost for the year.[6]

While Revenue Canada was questioning the validity of tax claims made by film investors, the new Canadian Film Development Corporation was making vigorous attempts to promote the development of a feature film industry in Canada. By 1974, the industry was in a slump because the private investment dollars previously inspired by the tax shelter had become unavailable. The trade press reported that only two major feature films would be produced in Canada in 1974 (Cinema Canada 13:6). All sectors of the industry pressured the federal government to act in order to revive the feature film industry.

Independent filmmakers issued the Winnipeg Manifesto, which demanded the introduction of a box office quota for Canadian films, an instrument that the Committee For An Independent Canada (1972) had earlier endorsed strongly. However, policy-makers perceived that quotas would necessitate the co-operation of the provinces and be likely to cause repercussions in the United States (see Chapter 7). Moreover, quotas would not address the immediate problem of attracting a large number of

6 Mandel v. The Queen, 76 DTC 6316, [1976] CTC 545 [FCTD], [1978] CTC 781 [FCA]; [1980] 1 S.C.R. 318. See also Lipper v. The Queen 79 DTC 5246, [1979] CTC 316.

private investors to the feature film production industry. The federal government's response was to amend the Income Tax Act so as to re-attract the private investors who had been frightened away from the industry by the active disapproval of the Department of National Revenue.

The introduction of film certification

On 5 August 1975, Secretary of State Hugh Faulkner announced the introduction of a new income tax regulation (1104(2)(h)) allowing investors to deduct in one year, against income from all sources, 100 per cent of their investments in certified feature films. Although the program was then planned as a temporary measure, it has become, with periodic reforms, an important instrument in Canadian film industry policy.

Initially, the essential requirements for certification were that the film be produced by a Canadian citizen or landed immigrant, run at least seventy-five minutes, and use Canadians in at least two-thirds of the key creative positions (director, screenwriter, music composer, stars, and so on). Additional requirements included Canadian ownership of the copyright, a 75-per-cent minimum level of remuneration payable to Canadians, and the same percentage of all costs for final preparation (editing, processing, and so on) incurred for services performed in Canada. Films produced under a coproduction agreement between Canada and another country were also eligible for certification. These provisions were retroactive to include film productions commenced after 18 November 1974. Films not certifiable under the new regulations remained eligible for the 60 per cent capital cost allowance that had been available since 1954.

The Canadian film industry's immediate reaction to the new regulations was less than enthusiastic. Accompanying the increased capital cost allowance was a voluntary quota plan that many filmmakers considered wholly unsatisfactory in comparison to the legislated quota and levy proposals they had favoured. The secretary of state received numerous representations from filmmakers to the effect that films shorter than seventy-five minutes should also be eligible for the 100 per cent capital cost allowance. Many filmmakers also strongly felt that the new definition of a Canadian film was not strict enough to ensure the reflection of a Canadian identity in the productions encouraged by the tax regulations. In particular, they pointed to the fact that the two-thirds rule permitted a

'Canadian' film to be made with neither the screenwriter nor the director being Canadian (Cinema Canada 21 [September 1975]: 8, 9, 18, 19).

The 1976 amendments

In response to these concerns, the regulations were amended in 1976 (SOR/76-748). To encourage a greater use of key Canadian personnel, a point system was created. In order to be certified by the secretary of state, a film had to earn at least six 'units of production' by Canadian individuals providing important services. The director and screenwriter were worth two points each; the highest paid actor or actress, the second highest paid actor or actress, the art director, the music composer, the picture editor, and the director of photography were worth one point apiece. The producer was not included in the point system because, as under the first regulations for certification, it is mandatory for that function to be performed by a Canadian.

Although the new system made it more difficult to produce a film with few Canadians among the pivotal creative personnel, it was still possible. For example, the screenplay credit could be split between two writers, one foreign and one Canadian, and one point would be awarded for the Canadian screenwriter, who would not necessarily provide the primary input. Moreover, the film could have neither a Canadian director nor a Canadian actor as the (highest paid) star.

The 1976 amendments retained the provisions ensuring that the tax incentive's primary economic benefits remain in Canada. Not less than 75 per cent of the aggregate remuneration (other than that payable to the producer or the individuals covered by the point system) must be payable to Canadians, and not less than 75 per cent of the total costs incurred for processing and final preparation of the film must be for services provided in Canada.

The lobby on behalf of the makers of short films was successful, and a new category of a 'certified short production' was created. Films or tapes of less than seventy-five minutes' running time are now eligible for the 100 per cent capital cost allowance, provided they meet the requirements, including the point system for a 'certified feature production'. Or, a production can qualify as a certified short if the producer is a Canadian and at least 75 per cent of all costs incurred for producing the film or

tape is payable to Canadians. Thus, an independent television producer, for example, can qualify a work under the tests for either certified shorts or certified features.[7]

Also among the 1976 amendments was a measure to increase the attractiveness to investors of Canadian as opposed to foreign productions. The capital cost allowance for films and videotapes not eligible for certification was reduced to 30 per cent.[8] Capital cost allowance on these nonqualifying films may be claimed only against other income in the class, as opposed to the generous capital cost allowance for certified productions, which may be applied in full against a taxpayer's income from all sources.

The 1978 amendments

In December 1978, the federal government enacted further amendments to the legislation (SOR/78-948). Many of these amendments were in response to Revenue Canada's continuing battle with film investors. However, as Wise (1979, 245) suggests, the government's attempt 'to clarify many of the existing uncertainties with respect to certified motion picture films.... [created] a whole new area of confusion.' The confusion was substantially alleviated eleven months later, when Revenue Canada (1979) issued Interpretation Bulletin IT-441. Without burdening the reader with a detailed discussion of the 1978 amendments and the subsequent interpretation bulletin, the following is a summary of the most important features of the modifications:

- Extended date. If principal photography or taping is completed within sixty days of the end of the year, the investor is entitled to claim capital cost allowance to the extent of his share of production costs incurred before the end of the year.

- Revenue guarantees. A revenue guarantee is a contract or other arrangement that gives the investor the right to receive a fixed minimum revenue for a right to the use of a certified production. Under the amended regulations, a taxpayer may not claim the capital cost allowance

7 For a good discussion of the problems of certifying television productions and other tax considerations, see McQuillan and Lamb (1980).
8 From 1961 to 1976, the capital cost allowance for videotape productions of all types was 100 per cent (SOR/61-22).

for that portion of his investment that is covered by unconditional revenue guarantees. Producers have, therefore, become careful to include only conditional revenue guarantees in distribution contracts (a common contingency involves the quality of the film).

- Cash payment. The taxpayer must pay in cash at least 20 per cent of the total cost of acquisition of his interest in the film or tape. The balance may not be paid by a nonrecourse note, and the debt must be discharged in full before the end of the fourth year after the end of the year in which the investor acquires his interest in the film.

- Certification. Additional requirements for certification prevent the investor from acquiring his interest from a nonresident and from acquiring his interest after the day of the film's first commercial screening or twelve months after the completion of principal photography, whichever is earlier.

These detailed amendments reflect the government's firm desire that the tax incentive not be abused. All of the most common abuses were effectively eliminated by the legislation.

The National Film Prospectus Policy

Abuse of the tax system by sophisticated investors is not, however, the only concern of the authorities. An equally pressing concern, which initially became important during the 1979 boom in public offerings of big-budget film investments, is the protection of investors against abuses by producers and other promoters. The provincial securities commissions, particularly in Ontario, became concerned after widespread reports of producers' having 'taken off the top' a disproportionate share of the funds raised in some early public offerings. In response to this and other problems, a draft national policy with respect to film financings was issued (Ontario Securities Commission 1980). The guidelines contained in the draft policy focussed on maximum producer fees, completion guarantees, distribution agreements, revenue allocations, and various elements of prospectus disclosure. In the fall of 1981, after more than a year of consultations with and submissions by the industry, securities commissions across Canada released a final National Film Prospectus Policy (Ontario

Securities Commission 1981). Among its guidelines were a formula for maximum producers' fees[9] and requirements for continuing financial disclosure.

Recent certification changes

While the securities commissions were inviting representations from the production industry and its legal and financial adjuncts, the Department of the Secretary of State was reviewing the certification program. A discussion paper was issued in the summer of 1980 to serve as a focus for consultations with industry representatives (Canadian Film Certification Office 1980). The paper presented various models for reform of the point system, including one that incorporates a graduated incentive proportional to the level of Canadian participation. On an expanded ten-point scale, eight to ten points would make a production eligible for the 100 per cent capital cost allowance; five to seven points would merit a 60 per cent allowance. Other important potential reforms presented in the paper included: an additional point for a distribution agreement with an independent Canadian distributor; the creation of a separate capital cost allowance, set above 100 per cent, for development of Canadian scripts; and the certification of made-for-television series as one property even though completion of principal photography might be spread over two taxation years.[10]

9 The formula, subject to a higher ceiling for deferred fees, is: 'Promoter's fees shall not exceed, in aggregate, an amount equal to the sum of the following percentages of direct costs excluding promoter's fees as per the budget in the prospectus:
10% of the first $500,000
6% of the next $500,000
5% of the next $500,000
3% of the next $1,000,000
2% of the amount in excess of $2,500,000.' (Ontario Securities Commission Bulletin 12/82, 20E)

10 The Department of Communications is undertaking another major film study during 1982-3, and some of these recommendations may be considered again. The Producers Council of Canada has submitted a brief to the minister recommending a three-tiered capital cost allowance system: 150 per cent for all-Canadian films; 100 per cent for films that meet the current certification requirements; and 50 per cent over two years for other films that provide a significant economic benefit to Canada but that fail to reach the threshold for certification. Among the other suggested measures is a tax holiday on profits from film investments (Cinema Canada 85, 3).

In December 1980, the minister of communications, newly responsible for the certification program, announced the introduction of some modifications. Effective 1 January 1981, any individual who receives screen credit or provides related services as a producer, executive producer, associate producer, or presenter must be a Canadian. This reform was made in response to a perception that, although a Canadian always had the nominal role of producer in order to qualify a film for certification, a non-Canadian executive producer or presenter often exercised most of the financial and creative control.[11] In addition, except for certain limited circumstances, points are no longer awarded for a Canadian who shares a key creative position with a non-Canadian. Other reforms helped animated films qualify for certification, encouraged formal apprenticeship programs for key personnel, and discouraged the replacement of Canadians by non-Canadians during production.

Another phase of revisions, effective 1 January 1982, was announced in early June 1981. Although the minister stated that the government's policy represented 'a practical balance between commercial viability and Canadian cultural content' (Globe and Mail, 8 June 1981), the principal focus of the amendments is forcefully on the latter. For example, if one screenwriter is not Canadian, the author of the work on which the screenplay is based must be Canadian, and the work must be published in Canada. No points will be awarded in cases of a Canadian's and a non-Canadian's contributing equally to the screenplay; the principal screenwriter must be Canadian. Two of the possible four points for the director and screenwriter are now obligatory for certification, as is one of the two possible points for the principal performers' positions. Therefore, productions must now have a Canadian in one of the two leading roles, as well as a Canadian director or screenwriter, in order to qualify. The requirement for certification remains six out of the possible ten points. The modified point system is shown in Table 3.

An additional revision allows a dramatic mini-series of up to thirteen episodes forming one story to qualify for certification. Special certification

11 Under these regulations, the Canadian Film Certification Office may grant an exemption to allow a non-Canadian to receive screen credit for a producer-related function if, for example, a foreign producer held the original rights to the project and arranged development financing. However, the foreign producer must not be in a position to exercise control over the production.

TABLE 3
Revised point system for film certification, 1 January 1982

Canadian personnel	
Director	2 points
Screenwriter (or the principal screenwriter and the author of the work on which the the screenplay is based)	2 points
Highest-paid actor or actress	1 point
Second-highest-paid actor or actress	1 point
Production designer (or art director)	1 point
Director of photography	1 point
Music composer	1 point
Picture editor	1 point
Total requirement:	6 out of 10 points

rules were also created for feature-length documentaries and animated productions.

In general, the reforms respond to the concerns of cultural nationalists and discourage the production of big-budget 'international' feature films using tax-shelter financing. The extensive amount of bad press in 1980 and 1981, which caused great embarrassment to producers and policy-makers, was almost entirely focussed on the multimillion-dollar, culturally neutered productions. Therefore, the most recent changes to the film certification program represent a politically rational method of continuing to confer benefits on the film production sector while eliminating many of the elements of the policy that were widely perceived to be objectionable. Since the amendments grew out of prolonged consultations between the various segments of the industry and the government, it is likely that even those adversely affected by the revisions - the big-budget producers - have anticipated ways of adapting to the new regime. The logical alternative, the complete abandonment of the accelerated capital cost allowance, would not have been in the best interests of either the beneficiaries of the policy or the politicians who had created their own vocal constituency.

Following the November 1981 budget announcement, by which the 100 per cent capital cost allowance for investments in Canadian films was to be made claimable over a two-year period instead of one as of 1982, producers, with the support of Communications Minister Francis Fox, launched

an intensive lobby. As a result, in mid-December the Department of Finance announced that this change will not be implemented until 1983, at which time taxpayers will be able to claim a 50 per cent allowance in the year of acquisition and the balance in the following year. No further amendments affecting this policy were introduced in the budget of June 1982. The capital cost allowance for film investments will remain attractive compared to the write-offs available for other types of investments during 1982 and subsequent years. But since investor confidence in the film industry is extremely low, it is unlikely that the availability of the generous write-off will alone generate a large volume of investment.

The future design of the capital cost allowance may well be affected by the report of the Federal Cultural Policy Review Committee, when it appears in late 1982, as well as by further representations by the production sector and input from the Department of Communications. Since it is apparent that the frequent changes in the regulations have created uncertainty among investors and raised compliance costs for producers, many people hope that the federal government will resist the temptation to amend the rules so constantly in the future.

Impact

The instrument of the capital cost allowance was directly responsible for a tremendous increase in film production activity in Canada between 1974 and 1980. However, two of the policy's principal goals were not achieved. Very few production companies that could produce films without tax-shelter financing were developed, and a Canadian cultural identity has not emerged to any appreciable extent in the films thus far produced. On the positive side, relatively large numbers of Canadians have been given the opportunity to practise their film-related crafts of acting, writing, directing, and so on. Both the industry and the media are now propagating the view that this large talent pool will shortly be put to good use creating new Canadian productions for pay-television, which is to be introduced nationwide by mid-1983. However, for reasons to be discussed in the next chapter, it should be not assumed that the advent of pay-TV will automatically stabilize the production industry and meet the desired cultural goals.

Tables 4 and 5 set out the annual volume of certified productions since the inception of the program, as well as a list of all of the certified English-language feature films for a selected year. Table 5 reveals that very few of the 1979 features have achieved commercial success to date, and even fewer deal with Canadian subjects. It should be noted, however, that several certified features produced subsequently have attained commercial and artistic success. Moreover, since the bulk of certified production was concentrated in a recent two-year period, it is not appropriate to draw conclusions from the available data without a caveat to allow for future developments.

A report prepared by economic consultants for the secretary of state (ERA 1979) noted a variety of positive effects of the 100 per cent capital cost allowance. Direct and indirect economic benefits arising from the incremental investment in film production include job creation (industry-related and otherwise), increased foreign revenues, and increased foreign investment. The report concluded that the economic benefits derived from the program far outweigh its costs. However, this conclusion is based on the assumption that the cost of the program to the federal government is equivalent to the marginal borrowing cost of the amount of tax deferred by investors. In fact, since the majority of the certified feature films produced to date have failed to earn substantial revenues, there is little income for the government to tax; consequently, the tax deferral is more properly characterized as a tax loss. Additionally, the authors assumed that the 1977 level of private investment in feature films ($13 million) would remain constant; this proved a gross underestimate. The inaccuracy of these assumptions makes it unlikely that the report's conclusions remain valid.

Certainly, as the ERA report noted, the capital cost allowance program has been successful in shifting the principal source of funding for film productions away from the CFDC and industry entities (production companies, distributors, exhibitors) to private investors. A substantial proportion of the funds allocated to investments in certified films by private investors is, however, actually public money. Therefore, although the instrument may appear to be shifting the burden from government to the private sector, a more accurate analysis would reveal that a relatively small number of high-income taxpayers are being allowed to allocate public revenues as they see fit. For the policy-maker, the negative implications

TABLE 4
Certified films, 1974-81

Year	Feature productions (75 minutes and over) Number certified	Feature productions (75 minutes and over) Total production value[a]	Short productions (under 75 minutes) Number certified	Short productions (under 75 minutes) Total production value[a]
1974	2	$ 1,361,040	b	b
1975	20	7,622,701	b	b
1976	30	18,065,078	344	$ 5,509,881
1977	41	29,313,184	382	12,502,701
1978	32	36,741,273	534	9,135,360
1979[c]	67	180,015,179	743	35,207,521
1980[c]	59	156,521,861	1,181	57,900,000
1981[c]	37	64,712,480	264	39,800,000

a Production values include official co-productions, as well as films certified in the year but actually produced in previous years.
b Shorts were not eligible for certification in 1974 or 1975.
c Figures are subject to some degree of change, since applications are still being processed for a number of films produced since 1978. As of June, 1982, the production values (based on advance rulings) for 1982 features and shorts respectively were $29,518,323 and $10,525,341.

SOURCE: Canadian Film Certification Office

of this situation in terms of equity are outweighed by the political advantages of the tax-subsidy instrument, including the appearance of non-interference in matters of culture and public taste as well as the concealment of the true costs of the policy.

It would be a mistake to characterize the 100 per cent capital cost allowance program as a windfall for wealthy investors. In fact, although reliable statistics have not yet been compiled (and may never be), it is apparent that the majority of those who purchased film units have not recovered the cost of their investment. One close observer of the film industry recently asserted that 'no more than one in twenty-five of those who have purchased film units over the last few years have recovered the cost of their investment' (Wise 1981, 11). A 1980 survey by the CFDC of thirty-three productions financed through public issues during 1977 to

TABLE 5
Certified English-language feature films, 1979

Not yet released[a]	Test-marketed only[b]	Released; no commercial success	Commercial success[c]	Canadian theme[d]
This Time Forever	Title Shot	Pinball Summer	The Changeling	Surfacing
Meat the Cleaver	Final Assignment	Hog Wild	Prom Night	Suzanne
The Intruder	Finishing Touch	Agency	Terror Train	
Double Negative	Head On	Under the Cover Cops	Scanners	
Deadline		Phobia	Middle Age Crazy	
Crunch		Klondike Fever		
Parallels		Kidnapping of the President		
Autumn Born		Nothing Personal		
Off Your Rocker		Bear Island		
Teddy		Tulips		
Babe		Improper Channels		
Never Trust an Honest Thief		Dirty Tricks		
Different Strokes		Tanya's Island		
South Pacific 1942		Silence of the North		
Blood, Sweat and Pride		Mondo Strip		
Hight Point		The First Hello		
Skating on Thin Ice		The Last Chase		

a Not released in theatres as of April 1982. Other Canadian feature films produced subsequently, such as Ticket to Heaven and Quest for Fire (coproduction), have been released and have achieved commercial success as defined in note c.

b Test-marketed only; general release may or may not follow.

c Commercial success, defined as wide distribution and favourable public response though not necessarily full recoupment to investors.

d Canadian subject matter or other significant Canadian cultural content. Neither film listed attained commercial success. Some films not listed under this heading have Canadian settings that are identifiable as such.

SOURCE: Data supplied by CFDC

1979 revealed the fraction of the original investments returned to the unit holders was only about 25 per cent.[12]

The feature film industry is currently in a depressed state because the incentive provided by the capital cost allowance is no longer sufficient to attract the amount of capital that fuelled the boom production years of 1979 and 1980. Evidence to this effect is provided by the large number of film units left unsold at the end of 1980 and 1981, with a total value of $40 million and $20 million respectively. Most observers (see, for example, Bird 1981, 59) characterize this fall-off as part of a natural process of adjustment, with the ultimate result being a smaller but more stable film sector.

Current high interest rates make less risky investments more attractive. Investors fear that, despite the notable financial success of a few Canadian movies, the revenues of many films will be insufficient to cover their promissory notes. They are nervous because the last thing they desire from their tax-sheltered investments is to be forced to repay their notes - with very costly dollars - out of their own pockets. Given the prohibition of nonrecourse notes and other regulations, the initial cash-flow saving created by the 100 per cent capital cost allowance is completely lost if the film earns no revenue and the investor is required to honour the promissory note when it falls due (McQuillan 1980, 105). In addition, the investor has to pay interest on the note at rates prevailing in the time of payment, and the 1981 budget has created uncertainties about the future deductibility of this interest.[13]

High-budget Canadian features have proven, in general, to be the least commercially viable film investments. Many observers believe that a principal reason is that the percentage of a film's total budget translated into on-screen production value generally decreases as the budget increases. High 'soft costs' include interest on development and interim financing, issue expenses, and brokerage commissions, none of which directly contribute to the quality of the movie but all of which increase the gross receipts needed to recoup the investment. More fundamentally, all

12 The study, carried out by the accounting firm of Jarrett Goold & Elliott, was internal and unpublished, but the results found their way to various public seminars.

13 The budget announcement of June 1982 stated that interest deductibility will be reviewed and that no changes in the rules will be introduced until 1983.

high-budget films are risky investments, particularly in the absence of a firm distribution deal. Even if 30 per cent of such a film's budget can be attributed to soft costs, that figure cannot be blamed for lack of commercial viability; in the vast majority of cases the film did not recoup anywhere near 70 per cent of its costs.

The income tax regulations themselves also militate to some extent against the commercial viability of certified Canadian films. For example, the rule against revenue guarantees prevents producers from making firm presales. While this prohibition prevents certain abuses, it goes against the business structure of the industry and serves to increase the risk to investors. Another important example is the requirement that an investor must hold an undivided proprietary interest in <u>all</u> the components of the film, including all theatrical, nontheatrical, television, pay-television, local syndication, cable television, hotel television, video cassette, and video disc distribution and exhibition rights in perpetuity. Although some of these rights may be licensed to third parties, they may not be disposed of (Revenue Canada 1979, 1). Therefore, the independent producer may not take advantage of the common U.S. industry practice of disposing of distribution rights to certain markets in exchange for cash advances and a guaranteed minimum consideration. Since such advances would reduce the need for interim financing at rates currently approaching 30 per cent, they would effectively reduce the overall cost of the film and increase the chances of full recoupment. Also, the nature of tax-shelter financing forces producers to conform to an artificial timetable, placing undue emphasis on the end of the calendar year, and encourages a project-by-project approach rather than continuous development of new films.[14]

The ultimate effect of such restrictions is threefold. First, producers of high-budget films will increasingly make every attempt to bypass tax-shelter financing in favour of traditional forms. The downside of this, from a public policy viewpoint, is that these producers will have little incentive to employ Canadian talent. Second, by restricting the potential profitability of films, the government regulations effectively defeat their original purpose of creating a strong production industry that can eventually thrive without the support of government tax expenditures. Finally, if there is little or no revenue to tax, then the intended tax deferral

14 These anomalies were identified by Stanley Hartt in a seminar on 15 September 1981 at the Trade Forum, Festival of Festivals, Toronto.

becomes a permanent tax subsidy. Since permanent subsidy of any industry must be justified by the creation of visible net social benefits, the federal government's tightening of the regulations for 1981 and 1982 so as to increase the Canadian content of certified films may properly be viewed as a recognition that the subsidy exists and a stricter identification of the nature of the intended benefits. However, the capital cost allowance may have to be increased beyond 100 per cent in order to attract large numbers of private investors to future, more narrowly defined certified Canadian films - a policy alternative rendered highly unlikely given the present government's 1981 assault on tax expenditures. Therefore, the government will experience substantial pressure from interested groups to develop alternative policies to replace the increasingly less attractive capital cost allowance.

7
REGULATION

Governments at the federal and provincial levels use their regulatory powers as effective policy instruments in many sectors. The Canadian film industry is affected by several forms of regulation including censorship (which is not discussed in this paper), the Canadian Radio-television and Telecommunications Commission's Canadian-content regulations on television broadcasting, and the same body's conditions of licence attached to both conventional and pay-television licensees. Other possibilities include quota regulation, which in recent years has involved voluntary arrangements only, and a levy or earmarked box-office tax, which has occasionally been threatened but never implemented.

Quotas and Levies

The quota, which is one possible choice of regulatory instrument for film policy, falls into two distinct categories: the import quota and the screen quota. A screen quota reserves a portion of screen time for domestic films; an import quota limits the number of foreign films brought into the country. Many European film-producing countries have introduced one or both measures in order to protect and encourage domestic film production. At present, no import quota is in force in Canada. A screen quota does exist, but it is a voluntary system and the country's second-largest exhibition chain opted out of it in 1978 with no substantial repercussions.

Federal-provincial considerations

Under the Canadian constitution, import quotas would fall within federal jurisdiction whereas screen quotas would be imposed by the provinces. (The voluntary quota arranged between the secretary of state and the principal exhibitors is a screen quota, but as a voluntary arrangement it

is exempt from constitutional limitations.) The fact that a national screen quota would require legislation by each province plus some form of overall co-ordination is a significant barrier against the introduction of this policy instrument.

Individual provinces have considered and even legislated quotas at various times. In 1929, a government bill introduced in British Columbia would have made it compulsory for exhibitors to show 20 per cent Canadian or British feature films. However, the bill was withdrawn four days after its introduction. Cox (1975, 20) has attributed the short life of the legislation to exhibitors' successful lobbying, including an outlay of several thousand dollars, which may have been a bribe. From 1931 until the early 1960s, Ontario imposed a content quota system on newsreels, requiring that 40 per cent of each one shown had to be on the British Empire, with at least 10 per cent of each devoted to Canadian stories. The quota was particularly beneficial to one Canadian production company, Associated Screen News, which supplied the Canadian footage for insertion into the foreign (mostly U.S.-made) newsreels. In 1975, the Ontario Theatres Act was amended to provide for quotas on Canadian films by permitting regulations

> requiring any proportion of films available for distribution to exhibitors or of films exhibited in theatres or any class thereof to be of Canadian manufacture and origin and fixing such proportion on a monthly or yearly basis. (Section 63(1)(11))[1]

The provision remains in force although it has never been used.

Federal actions: some history

Government policy-makers have consistently placed the problems of the

1 A similar provision first appeared as a 1931 amendment to The Theatres and Cinematographs Act. However, it was British films that were the subject of the legislation, and this provision was retained in the Theatres Act until 1975. In Quebec, the Act Respecting the Cinema (assented to 19 June 1975), provides that 'the Lieutenant-Governor in Council, if he considers that suitable market outlets for Quebec films are unduly restricted in Quebec, may, by regulaton, require the owners and operators of moving picture theatres and outdoor theatres to include Quebec films in their programming, in such proportion and at such time as he indicates' (section 8).

distribution of Canadian films in a position far secondary to the encouragement of their production. The Firestone Report, which led to the formation of the Canadian Film Development Corporation, suggested that import and screen quotas be considered only 'as a means of last resort', with the decision deferred until such time as it could be demonstrated that Canadian filmmakers need such arrangements to obtain adequate access to Canadian theatres (Firestone 1965). Since Canada's capacity to produce quality feature films had not yet been proven, it was sensible for the government of the 1960s to focus its policies on production rather than on distribution. Although the CFDC's original mandate incorporated a reference to distribution,[2] there was little political pressure directed at the federal government to find solutions to the problems of distribution and exhibition until the mid-1970s, after a large body of more than one hundred Canadian feature films had been produced.[3]

The earliest proposals for some form of film quota or levy in Canada emerged both as a cultural reaction against Hollywood domination of Canadian screens and as an economic reaction against the substantial flow of dollars extracted from the Canadian box office by the U.S. motion picture industry. The federal budget of November 1947 implemented a wide variety of import restrictions, quotas, and taxes in an effort to prevent a devaluation of the dollar from the serious postwar imbalance of payments. Anticipating that motion pictures would soon become part of the austerity program, Canadian producers, including the NFB, lobbied in favour of forcing the American film companies to reinvest a significant portion of their Canadian box-office profits ($17 million in 1947) in the country in order to stimulate the growth of a domestic feature film and documentary industry. But, as documented by Berton (1975, 169-91) and

2 The Corporation may 'advise and assist the producers of Canadian feature films in the distribution of such films...' (Canadian Film Development Corporation Act, s. 10(1)(e)).

3 However, the discussions in the House of Commons leading to the establishment of the CFDC reveal that some politicians were sensitive to the problem of what would happen to Canadian films after they were produced. David MacDonald was 'convinced that unless we encourage - and I use the word encourage advisedly - exhibitors to display these films, we are involved this afternoon in an exercise in futility'. He suggested that a federal-provincial conference should be called to discuss the 'machinery' by which the exhibition of Canadian films could be encouraged (Hansard, Commons Debates, 27 January 1967, 12368).

Collins (1979, 34-6), the government ignored the proposals of the Canadian film community in favour of the Canadian Cooperation Project, a program devised by the lobby group of the Motion Picture Association of America, which represented the major U.S. film companies, and Famous Players Canadian Corporation, the largest exhibitor and distributor in Canada. Effectively, Canadian politicians and the major American film companies agreed that in return for the government's exempting motion pictures from any quota regime or restriction on the flow of box-office profits to the U.S., Canadian references would be inserted into as many Hollywood features and newsreels as possible in order to attract American tourists to Canada. There is no evidence that these 'plugs' had any positive effect on the tourist traffic to Canada or on the dollar balance. Other elements of the Canadian Cooperation Project, such as a promised increase in distribution of NFB films in the United States and increased production by American companies in Canada, never advanced beyond the discussion stage. The Project, which was quietly terminated in 1958, stands as a bitter reminder to Canada's nationalistic film community, much of which remains opposed to any form of voluntary agreement between the government of Canada and the dominant film exhibition and distribution corporations.

The 1947 proposal of the NFB and independent producers that foreign film companies be required by law to reinvest a percentage of their box-office profits has become the norm in many of the world's film-producing nations. Such a levy or box-office tax most recently surfaced as a serious proposal by Secretary of State John Roberts. His November 1977 Film Policy presented Cabinet with several alternative models, such as a 10 per cent tax on distributors' gross rental receipts with a rebate equivalent to the amount returned to Canadian producers as their share of the distribution profits of Canadian films. It was suggested that the CFDC could use the revenues collected through the levy for investment in Canadian productions.

Britain's Eady Levy

The model that inspired Roberts' proposal was Britain's Eady Levy, named after the civil servant who drew up the original scheme in 1950. Originally a voluntary arrangement between the Government and the industry, it

was made compulsory in 1957.[4] A levy of approximately 5 per cent is payable on each ticket, for both British and foreign films, sold by an exhibitor.[5] Some funds raised in this manner are distributed by the British Film Fund Agency as grants to the Children's Film Foundation, the British Film Institute, the National Film School, and the National Film Finance Corporation, which makes loans to producers. The remainder go to the makers of eligible British films. In order for a film to be eligible, it must be produced by a British individual or company and must either meet certain minimum requirements with respect to the percentage of footage shot in the U.K. or be produced under an international coproduction agreement to which the U.K. is a party. Ineligible films include those made by or for a department of government, those of sixteen milimetres or less in width, and those made primarily for television.

In recent years, the average amount available for distribution has exceeded 4 million pounds annually. Each film receives a share of the levy proportionate to its domestic distribution earnings, subject to a ceiling. Short films (under thirty-three minutes) and newsreels are entitled to two and one-half times their earnings from distribution; the effect of the multiplier is to provide them with a larger proportion of the levy than they would otherwise receive. A British producer, Kenneth Maidment (1979, 23) has emphasized that 'the small British picture relies on Eady to recoup a substantial part of its cost. Without that investment the film would not have been made.' He points out that the Eady Levy has also encouraged the production in Britain of high-budget international films, since their production costs are effectively reduced by the amount of the levy earned (that is, the levy is 'discounted in advance by the financier and is being invested in the current picture').[6]

The fate of Roberts' proposal

John Roberts' 1977 proposal to introduce a levy in Canada was firmly quashed. The lobby group of the Ontario exhibitors, in a letter to the

4 Cinematograph Film Act, 1957. The levy has been amended and extended by subsequent legislation and regulations, most recently the Film Levy Finance Act, 1981.

5 Exceptions are made for situations such as educational and charitable screenings and theatres with very low weekly earnings.

6 Maidment (1979, 23) also describes the French levy system, whereby the levy does not help to recoup the costs of the current film but rather goes towards a credit to be invested in the producer's next film.

minister of finance, termed the proposed levy a 'rip-off' saying, 'There is no justifiable reason for any form of taxation that would have as its objective the transference of revenue from one sector of the industry to another' (Trade News North 2:3).

The self-interest of the independent theatre owners did not, however, constitute the major barrier to its introduction. The pivotal factor was undoubtedly discussions held in November between the secretary of state and Jack Valenti, president of the Motion Picture Association of America, representing the major distributors. Although these discussions have never been fully revealed, certain elements are known. Valenti's position was that the major distributors could not tolerate a box-office levy in the Canadian market, the largest outside the U.S. If any form of special tax were implemented, the MPAA would exert its considerable influence in Washington and demand retaliatory measures, such as tariffs or quotas on Canadian productions. The U.S. government would not take kindly to the proposed interference with free trade, which was probably a violation of Canada's trade responsibilities under the General Agreement on Tariffs and Trade.

At the heart of Canada's decision to drop the idea of a levy was likely the realization that even if the U.S. government did not introduce retaliatory measures, the MPAA members themselves had the power in the world market to reduce significantly the distribution opportunities for Canadian productions. In addition was the important consideration that Canadian nationalists had recently won two important concessions, in the form of amendments to the Income Tax Act that prohibited the deduction of advertising expenses in non-Canadian newspapers, periodicals, or radio and television stations.[7] New Canadian restrictive measures directed at protecting the domestic film industry might create enough additional pressure in Washington to cause the U.S. government to introduce mirror legislation that would withdraw the right of advertisers to deduct costs of advertising on Canadian broadcast outlets[8] and in Canadian periodicals.

7 For the print media, s. 19(1), in force from 1 January 1976; for the broadcast media, s. 19.1(1), in force from 22 September 1976.

8 A bill to this effect was proposed to Congress by the Reagan administration in November 1981. Similar legislation was presented but not adopted in 1980 by the Carter administration. During the 1980 trade

The Liberal government was unwilling to risk such retaliation, which could seriously damage the gains already made in these other cultural fields. In addition, the Cabinet was somewhat disenchanted with the film industry, since it had become clear that the Canadian Film Development Corporation would not, as originally intended, become self-financing after the initial investment by the federal government. Therefore, the MPAA, whose members received 93 per cent of all film rental receipts in Canada in 1977 and earned approximately $63 million in profit, had sufficient leverage to prevent the introduction of a levy.

The voluntary quota agreement

The Firestone Report characterized quotas as a negative approach that would do nothing to provide the Canadian production industry with the encouragement and assistance it needed. However, the report allowed that the problem of U.S. control of distribution in Canada might be alleviated by working out some voluntary system with the appropriate firms (Firestone 1965). Several years later, in July 1973, Secretary of State Hugh Faulkner negotiated an informal voluntary quota agreement with the two most important theatre chains in Canada. Under the terms of that agreement, every major English-language feature film was guaranteed at least two weeks of theatre time in Toronto, Montreal, and Vancouver. The largest exhibition chain, Famous Players Limited, agreed to take two-thirds of these Canadian films and Odeon Theatres Ltd., one-third. Distribution outside the three principal markets was promised for those films which did well.

Approximately twenty Canadian films received exposure during the two-year duration of the agreement. However, many people considered it a failure since few films were shown in favourable locations or distributed outside the three major cities. As described in Chapter 6, a prominent group of filmmakers issued the Winnipeg Manifesto in 1974, demanding the introduction of a mandatory screen quota for Canadian films. In Ontario,

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committee hearings on Canadian tax legislation protecting broadcast advertising, U.S.-border broadcasters asked for special duties and quotas on Canadian films and records (The Financial Post, 16 May 1981, p.3).

substantial pressure was building to adopt the 1973 Bassett Report's recommendations, which included a screen quota. The Committee for an Independent Canada pointed to the success of the Canadian Radio-Television Commission's content regulations in stimulating the Canadian record industry and renewed its call for a content quota in films. The Council of Canadian Filmmakers, a new lobby group representing most of the major film-related unions, called for 'an immediate quota system with a minimum objective of approximately twenty per cent of screen time being given to Canadian films' (Cinema Canada 12:53). According to a national Gallup poll, 65 per cent of the Canadian public would have approved the legislation of a screen quota.

Faced with these inputs, federal policy-makers could hardly allow the failed agreement to die quietly. The secretary of state announced a new voluntary quota agreement on 5 August 1975. Each of the two major theatre chains agreed to provide four weeks of screening time per year for Canadian feature films in every theatre that it either owned or controlled.[9]

For the purposes of the quota program, a Canadian feature film is defined as a film of not less than ninety minutes' running time that has been certified either as meeting the criteria for receipt of the 100 per cent capital cost allowance or for coproduction under an agreement between Canada and another country. Production by the National Film Board or with the financial assistance of the Canadian Film Development Corporation also qualifies a film for the quota system.

Supervision of the voluntary quota agreement is largely the responsibility of one distribution officer in the Toronto office of the CFDC. It receives quarterly reports showing the titles of Canadian feature films shown, the names of the theatres in which they have played, and the number of weeks they have been exhibited. It also provides exhibitors with a quarterly consolidated list of all Canadian feature films currently available.

When the quota program was initiated in 1975, it was accompanied by an investment program. Famous Players committed $1,000,000 to investment in Canadian films for the next year, and Odeon Theatres $500,000.

9 Given the seasonal operating periods of drive-in theatres, the commitment was reduced to exhibiting one week of Canadian feature films in each.

Both theatre chains exceeded their commitments, with Famous Players investing $2,077,375 and Odeon $557,500. However, all investments were curtailed in 1977, in the face of the secretary of state's apparent intention to include a levy system in his new film policy.

After the threat of the levy was effectively removed, Famous Players renewed its commitment to invest in Canadian feature films, and remains involved in the investment program as of mid-1982. However, Odeon officially declined further participation in either the investment or the quota program shortly after it merged with a Canadian-owned exhibition company to become Canadian Odeon Theatres in December 1977. The investment program had been a dismal failure from Odeon's point of view, since it had experienced considerable financial losses. As to the quota program, Odeon had never been fully committed to it; the chain achieved only about 57 per cent of its quota during its twenty-seven months of participation. Once the exhibitor/distributor lobby had won its battle against the proposed levy, Odeon perceived no advantage to be gained in continued participation in the program.

Famous Players, Canada's largest exhibition chain, has adhered much more seriously - and with considerable success - to the quota program. While its dominant market position and ownership by a foreign multinational[10] may have tended to increase its need to counterbalance any adverse government scrutiny with participation in a voluntary program beneficial to Canadian needs, this 'sensitivity factor' is not primary to the success of its commitment. Rather, Famous' ability to meet and often surpass its quota can most plausibly be related to its market position, which has allowed it to pick up many of the most commercially viable Canadian films for exhibition. Many of these highly promoted feature films have been licensed by Famous Players from major U.S. distributors - including, as in the case of Meatballs, Paramount, which shares the same parent company.

Strictly interpreted, Famous Players has never met the terms of its quota commitment, because in no year has every one of its theatres played four weeks of Canadian films. However, its performance has been successful in terms of the total number of weeks that Canadian features have

10 Gulf and Western (Canada) Ltd. became sole owner of Famous Players Ltd. recently when it acquired the 48.9 per cent interest held by Rogers Cablesystems Inc.

been shown. For example, during the third year of the quota program, (August 1977 through July 1978), 36 theatres out of the 221 owned by Famous Players showed no Canadian films at all. The 185 theatres that did participate showed thirty different Canadian films for a total of 1032 weeks. Since the total commitment of the exhibition chain was 770 weeks,[11] Famous exceeded its voluntary quota by 34 per cent.

Critics of the voluntary quota point to the fact that such consideration of the average success of the program does not reveal that many theatres, which may be in prime locations, do not achieve their quotas. In addition, since the quota is per theatre rather than per screen, multiple theatres - those containing several screens under one roof, as is now common in urban centres - can comply with the requirements by devoting only a tiny proportion of their total screen time to Canadian films.

The instrument

Although there is no doubt that during the existence of the quota more Canadian feature films have been shown in Canada for more weeks than during any previous period, the contribution of the program is uncertain. It is not possible to differentiate its impact from that of other government programs (notably the capital cost allowance) that increased the number of films produced, thereby increasing the probability that more films with audience appeal were available for exhibition.

Periodically and inevitably, the cultural nationalists and segments of the film community renew the debate concerning the imposition of mandatory screen quotas. Yet it is doubtful whether such legislation will ever be implemented in all provinces of Canada. The view promulgated by major exhibitors and distributors, which is that good movies, whatever their national origin, will be shown, is reasonable in that it tends to leave the power of choice in the hands of the consumer. Moreover, in many parts of Canada, such as most of the Maritimes, there are few theatres and all are of small capacity; only major blockbuster films are exhibited. The imposition of a quota in such circumstances would lead to financial

11 183 theatres X 4 weeks + 38 drive-ins X 1 week.

harm for the independent theatre-owner as well as widespread resentment of force-feeding on the part of voters. Many would perceive a quota as the imposition of the taste of a few urban central Canadians on the rest of the nation.

It is possible, however, that one or more provinces may unilaterally introduce a screen quota. For example, Ontario's Arts Branch recently studied a proposal to implement a quota for short films. Such a policy would be attractive to filmmakers and cultural nationalists without risking the appearance of undue political interference in the realm of popular entertainment - the main attraction would remain a function of consumer choice. In addition, exhibitors would suffer little loss of revenue as a result of a screen quota for short films[12] and would consequently be less likely to protest that they were unfairly being forced to subsidize the production industry. Neither would such a policy raise fears about American retaliation; the majors would not be concerned about protective legislation affecting only short films as long as they could maintain the status quo for feature productions in their largest foreign market.

These waters are currently being tested by a Canada Council program announced in September 1981. The Council is arranging an annual competition for short films, to be administered by the Academy of Canadian Cinema. Winning films will be awarded $2500 plus funds for postproduction and dubbing into English or French. The first group of nine winning short films will be made available free to movie theatres across Canada for exhibition during the summer and fall of 1982.

The Canada Council's incentive program for short films is a positive measure that, although limited in scope, neatly avoids the negative tendencies of a quota system. Foremost is the tendency to protect mediocrity, creating 'quota quickies' (a term coined in Britain before the war[13]) rather than promoting the artistic growth of the domestic production industry. By subsidizing the exhibition of only high-quality short films (those winning the competition), which will be packaged with the major feature films that audiences choose to see, the government will increase

12 The trend in recent years has been towards the exhibition of fewer short films, in order to trim costs and to get the public in and out of the theatres more quickly.

13 In Britain, some exhibitors not only met their quotas with cheap productions but also showed British films in the mornings only.

the public's exposure to Canadian short films without 'ghettoizing' them. In addition, the encouragement of short films in this manner is an investment in the future, allowing young filmmakers to develop skills and gain exposure.[14] However, the theatrical exposure of Canadian feature films, whatever their quality, will continue to be determined largely by the decisions of the foreign concerns that dominate the distribution market in Canada.

CRTC regulation

As we have seen, measures of Canadian content play a considerable role in the policy instruments of the Canadian Film Development Corporation, the capital cost allowance, and the voluntary quota system. It is in the regulations covering broadcast media, however, that they are most prominent. Here they affect the Canadian film industry both because so much television time is devoted to movies and because a large part of the industry is now engaged in making productions specifically for television screening.

The Canadian broadcasting system

The founding principles of the Canadian broadcasting system 'have survived with great tenacity as a set of policy objectives with very little change in half a century' (Ellis 1979, 76). Currently, these principles are embodied in Section 3 of the 1968 Broadcasting Act, which envisions a single system consisting of public and private elements. The public element is the Canadian Broadcasting Corporation, a Crown corporation established in 1936 that is mandated by the act to be 'predominantly Canadian in content and character'. Charged by the act with the responsibility to 'contribute to the development of national unity and provide for a continuing expression of Canadian identity', the CBC must also serve the 'special needs of geographic regions' and cover the 'whole

14 Since the Canada Council is able to commit only a small amount of funds to the encouragement of the exhibition of shorts, consideration might be given to the introduction of a legislated quota requiring theatres to exhibit Canadian shorts to accompany foreign-made features, or to a levy of (for example) 2 per cent on box office receipts, the proceeds of which would create a production fund for short films.

range of programming in fair proportion' in both English and French.

Under Section 3 of the Broadcasting Act, the private and public elements of the Canadian broadcasting system share the responsibility, inter alia, of providing programming 'of high standard, using predominantly Canadian creative and other resources'. Other themes of Section 3 include extension of service to all parts of Canada, Canadian ownership, freedom of expression, exchange of cultural and regional information, and provision for educational broadcasting. To achieve all of the 'objectives of the broadcasting policy for Canada', the act relies on 'regulation and supervision...by a single independent public authority'. This authority, the Canadian Radio-television and Telecommunications Commission, is also specifically charged with the duty of being 'flexible and readily adaptable to scientific and technical advances', a difficult and important task given the currently rapid developments in satellite technology and the like.

Of course, the CRTC does not actually carry the full burden of the regulation and supervision of the Canadian broadcasting system. The Department of Communications, Cabinet, Parliament, and the courts all share this responsibility to a significant extent. However, Part II of the Broadcasting Act gives the Commission important powers through which it is mandated to implement the broadcasting policy objectives enunciated in Section 3.

The most obvious of these powers is the authority to issue broadcasting licences, to which conditions may be attached. These licences may be renewed, suspended, or revoked, and the conditions may be amended. Although television broadcasters may not feel seriously threatened by the Commission's underutilized powers to revoke or refuse to renew licences, its attaching of conditions to them is a forceful tool.[15] So is the commission's moral suasion, which is heightened by its power to hold public hearings in connection with the renewal of a broadcasting licence or any other matter, forcing the principals to make promises, disclose intimate

15 For example, the CRTC recently required the CTV to add to its schedule several hours of Canadian dramatic programming. The network took its case all the way to the Supreme Court and lost (CTV Television Network v. Canadian Radio-Television and Telecommunications Commission et al (1980) 54 C.P.R. (2d) 94; decision in the Supreme Court of Canada (5 April 1982) not yet reported).

corporate details, explain weaknesses in performance, and respond to the concerns of interveners (often competitors and public interest groups).

In furtherance of its objects, the Commission is also empowered to regulate the character and amount of time that may be devoted to advertising and to partisan political programs and advertisements, as well as the times to be reserved for network programs by individual stations. For the purposes of this paper, however, its most crucial regulatory power is over the character and amount of time to be devoted to meeting the objective of providing programming that uses 'predominantly Canadian creative and other resources'.

Canadian-content regulations

Since the use of Canadian creative resources in broadcasting affects the employment prospects of Canadian actors and writers, it is hardly surprising that the Association of Canadian Television and Radio Artists has been in the forefront of the lobby in favour of stringent Canadian-content regulations. The first such regulations, implemented in 1960 by the Board of Broadcast Governors (the CRTC's predecessor) proved to be ineffective, largely because of the absence of any requirements for Canadian programming in prime time. The current television regulations, last amended in 1972, remain the result of an unsuccessful attempt to balance the interests of broadcasters, viewers, and nationalists (the last includes actors and others directly affected).

Basically, under the present regulations, the average amount of broadcast time any station or network devotes to non-Canadian programs may not exceed 40 per cent between 6:00 a.m. and midnight and 50 per cent (40 per cent for the CBC) between 6:00 p.m. and midnight.

The Commission itself has said that 'the existing regulations may no longer be adequate to carry out the aims of the Broadcasting Act' (Canadian Radio-television and Telecommunications Commission 1979). Its decision to conduct a review, currently underway, of the Canadian content regulations for television was based on an explicit recognition that the quantitative approach has failed to achieve the goal of stimulating the production - and subsequent enjoyment by viewers - of large numbers of high-quality Canadian-produced programs. In its public announcement, the Commission lamented the absence of Canadian drama from the schedules

of private English-language broadcasters and noted that 90 per cent of entertainment viewing (exclusive of news, public affairs, and sports) by Canadians is devoted to foreign-produced programs.

At present, the choice presented to Canadian viewers 'is between a well-financed American drama and poorly-financed Canadian drama' (Ferns, 1980). During the fall 1981 television season, the A.C. Nielsen Company of Canada reported that the top-drawing shows on the CBC were U.S. programs such as Three's Company (week ending 11 October, 3,165,000 viewers), Disney's Wonderful World (week ending 27 September, 2,965,000 viewers), Dallas (week ending 11 October, 3,085,000 viewers), and M*A*S*H (week ending 13 September, 2,039,000 viewers). Nielsen statistics also showed that the highest-ranking Canadian program on the Global network during the same period was the weekly Wintario draw, which was watched by fewer viewers than such foreign programs as Loveboat, Real People, and On the Buses. During the week ending 11 October 1981, Hockey Night in Canada was the only Canadian program to rank among the top fifteen network programs (that is, the top five each from on CBC, CTV, and Global).

Such Canadian programming as the comedy series Bizarre and SCTV Network, the adventure series The Littlest Hobo and the CBC children's special Introducing Janet all received strong audience response (more than one million viewers each) during the same season. However, the absence of quality regulation by the CRTC, combined with the financial reality that a foreign drama or comedy program can be acquired for about 10 per cent of the amount required to produce a comparable Canadian show, has resulted in 'a profusion of information and sports shows which require few facilities and employ few Canadian creative resources' (Hartle 1981, 2:28). In addition, current content regulations allow broadcasters to fulfill their quotas by concentrating Canadian shows in summer months (since the quota is averaged over the year) and outside of prime time (since the regulations define prime time as 6:00 p.m. to midnight, whereas viewing is concentrated between 8:00 p.m. and 10:30 p.m.). Babe (1979, 141-52) has pointed out additional distortions, particularly private broadcasters' fulfilling quota requirements partly through the overuse of repeats and the scheduling of coproductions, such as the Bobby Vinton Show, that appear to be American. However, it should be noted that although many coproductions do not reflect the goals of the Broadcasting Act in terms of 'the

continuing expression of a Canadian identity', they do employ 'Canadian creative and other resources' to a significant degree.[16]

The CBC and Canadian content

The CBC has always exceeded Canadian content requirements; in fact, it has been called the 'one buyer of independent [Canadian] television product on a consistent basis' (Ferns 1980b, 6). However, a recent survey by the Canadian Film and Television Association, of and for the benefit of its members, indicates that Canadian producers have made more presales (sales before production takes place) to clients other than the CBC. Although the results of the survey are confidential, certain figures were revealed publicly.[17] The total production cost of the programs surveyed, all made between 1971 and 1980, was $17.5 million; presales to the CBC accounted for $4.7 million or 26.8 per cent while presales to other outlets amounted to $6.8 million or 39.17 per cent.[18] In the area of acquisition of Canadian independent productions after completion, CBC purchases amounted to $1.2 million, compared to sales to other clients of $1.7 million.[19]

Among the conclusions drawn by the CFTA from its survey was 'that Canadian independent producers, if they can only command between 20 and 30 per cent of the production costs from the domestic market, are in a substantially worse position than independent producers in most other significant television markets around the world' (Ferns 1980b, 8). Suggested solutions included creating a pay-television system that would

16 The CRTC has not firmly fixed the required degree of active Canadian participation in the production of programs produced jointly by Canadian and non-Canadian companies or agencies. Producers are expected to provide the Commission with such information as the residence of key personnel, the proportion of the total budget devoted to Canadian talent and facilities, and a script or outline. With this information, the Commission forms a judgement as to the eligibility of the proposed program or series for counting towards Canadian-content requirements.

17 In a press release from the CFTA dated 20 November 1980.

18 In the programming area of drama, the survey found that the CBC's contribution was only 7.27 per cent of total production costs.

19 The survey also revealed that approximately $3.8 million or 21 per cent of the production costs had been assisted by capital cost allowance financing.

offer higher prices for independently produced programs, and increasing government funding of the CBC to enable it to provide more generous support to independent productions (up to 50 per cent of production costs).

Of course, the CBC itself produces a very substantial amount of programming each year - approximately $200 million worth in the 1980-1 fiscal year in both official languages. Although export sales have been increasing, the amount remains small - approximately $4 million or 2 per cent in the same year - compared to total production value (Canadian Broadcasting Corporation 1981, 17, 36).[20] An independent producer whose foreign sales represented less than 20 per cent of his revenue would certainly not survive; the CFTA survey indicates that Canadian independents must count on over 70 per cent foreign sales. Clearly, independent Canadian producers are faring much better than the CBC in appealing to the international marketplace; efficiency gains might well be made by directing more public funds towards the stimulation of independent private-sector production.[21]

The public network has not been a consistently generous outlet for the showing of Canadian feature films. For example, in 1976-7, the CBC English network showed only four Canadian films.[22] During the same period, CTV and Global showed five and fourteen Canadian films respectively (Canadian Film Development Corporation 1976-7). In 1980, perhaps to make amends, the CBC created the new position of director of independent production and appointed its former senior legal counsel to the post. Among the programs initiated under the guidance of this officer have been

20 On the basis of total export sales, the three best-selling programs were The Music of Man, The Wayne and Shuster Show, and The Nature of Things (Canadian Broadcasting Corporation 1981, 36). In comparison, OECA, the Ontario government's educational television authority, spent approximately $13 million on program production in its most recent fiscal year, of which some $1.4 million was recovered in sales to Canadian and foreign outlets.

21 Perhaps an equally valid conclusion is simply that the CBC has been producing mainly for the domestic market. But just as Canadians enjoy foreign, notably American, programming, there is certainly a substantial potential foreign market for high-quality Canadian programming and no disincentive to the CBC to try to recapture some of its production costs from foreign markets.

22 During the same year, Radio-Canada played thirty-five Canadian films and purchased a library of twenty English-language films to be dubbed into French for subsequent broadcast.

a prime-time series of Canadian feature films, a showcase series of short films by independent filmmakers, and an increased financing for the acquisition of products at all stages of production, including development ('seed') funding and coproductions with independent producers.

The role of Canadian-content regulations

The CRTC's current review of the Canadian content regulations appears to be based on the assumption that although the regulatory instrument has failed to achieve the goals of stimulating the program production industry and increasing the exposure of Canadian audiences to Canadian-produced shows, the solution lies in amending the regulations rather than in adopting alternative policies. Of course, one could hardly expect a regulatory agency to propose solutions that would tend to diminish its relative influence.[23] Among the ideas currently gaining favour with the Commission is the creation of a point system that would give more credit to certain categories of productions or to more expensive types of programming; such a scheme might or might not effectively serve the goals of the Broadcasting Act, but it would be certain to require maximum bureaucratic input.

Hartle (1981, 39-41) has derived several themes from the history of Canadian-content regulations. Prominent among them is the role of symbolism, whereby the government has adopted measures that are largely symbolic in order to satisfy the demands of cultural nationalists.[24] Although the CRTC presently appears determined to reform the policy in order to gain tangible results, the strongest special interest group remains the broadcasters. Consequently, the Commission will likely choose to

23 For example, a second CBC network on cable devoted largely to cultural programming, (as recently proposed by the CBC and rejected by the CRTC) would serve the goals of cultural nationalism but would threaten the CRTC's role in regulating Canadian content. From the federal government's viewpoint, the CRTC's total budget of approximately $14.5 million is less than half of the sum that would be needed to support such a second network.

24 The symbolic value of cultural nationalism remains a key element of the Liberal party platform. Minister of Communications Francis Fox recently stated, 'Culture should be at the top of the Liberal agenda... It is as important to Canadianize culture as it is to Canadianize the constitution and the price of a barrel of oil' (Sunday Star, 29 November 1981).

amend the regulations in ways that are highly symbolic, so that the policy instrument itself will serve to appease the large but dispersed group of Canadians concerned with the fostering of cultural identity.

Pay television

The advantages and disadvantages of regulation as a policy instrument may become more apparent than ever when pay-television is introduced nation-wide next year.

Although pay-TV is expected by many to be an economic saviour to the production sector and a cultural white knight to Canadian nationalists, its anticipated introduction into Canada was prodded mainly by external factors. American satellite signals, which carry an ever-increasing number of channels, can be received throughout the country with the appropriate equipment. Without - and perhaps even with - an indigenous pay-TV system, the effect of this technological imperative will be to decrease the CRTC's ability to regulate the Canadian broadcasting system and hence to decrease the political rationality of the continuation of a three-decade attempt to create and preserve a national identity through television. However, by vigorously ensuring that each pay-TV licensee lives up to its promise of performance, the Commission may stimulate a healthy flow of revenues to the domestic production industry, thereby justifying its own 'major raison d'être', Canadian content (Babe 1979, 141). The major fear of the production sector is that given such economic realities as the relative cheapness of imports and the inability of pay-TV to fund large amounts of Canadian programming fully, a replay of the boom-bust cycle is inevitable.

It was only after almost a full decade of studies, announcements, and resistance to the inevitable, that the CRTC finally, on 21 April 1981, issued a call for pay-TV applications. The public notice (Canadian Radio-television and Telecommunications Commission 1981a) announced a number of guidelines, the most important of which can be summarized as follows:

- Pay-television service must contribute to realizing the objectives set out in the Broadcasting Act by making effective use of Canadian resources, increasing the diversity of programming available to Canadians, and providing new opportunities and revenue sources for Canadian producers.

- Services must resist the temptation to become primarily distribution mechanisms for foreign material.

- Pay-television should be a premium, discretionary service, available at the option of the subscriber, rather than a universal system that would be paid for by all of the cable subscribers in Canada.

- Pay-television services must avoid 'siphoning' programs that viewers are accustomed to viewing on conventional broadcast channels.

- Pay-television must be free of commercials in order to avoid the diversion of advertising funds presently committed to the Canadian broadcasting system.

- Initially, a pay-per-channel system should be implemented, but the possibility of future pay-per-program service should not be precluded.

- Monopoly control of a Canadian pay-television system is not desirable.

- Pay-television should provide new opportunities for developing programs that reflect the various regions of Canada and should provide new programming in both official languages.

- A service involving integration of the production and distribution functions must ensure access and significant revenue flows for independently produced Canadian programming.

- A service involving integration of the distribution and exhibition functions must assure access to other pay television services.

- A service must have a significant level of commitment to Canadian programming, which must be demonstrated not only on the percentage of exhibition time but also by the percentage of gross revenues spent on the acquisition and development of Canadian programs and by the percentage of the total number of programs acquired.

Following the receipt of twenty-seven applications (ten national, seventeen regional), the Commission issued a number of questions to the applicants in order to clarify some of the major issues before the public hearing (Canadian Radio-television and Telecommunications Commission, 1981b). The first question focussed on the extent to which each application was predicated on the granting of a licence that was exclusive in either the type of program content to be offered or the geographic area to

be served. Follow-up questions asked each applicant to indicate how a decision to issue competing licences would affect the proposed level of commitment to Canadian programming. The final area of questioning involved the extent to which each applicant's level of commitment to Canadian programming was dependent on achievement of its estimated rate of market penetration. Applicants were required to restate their promise of performance to indicate their minimum dollar commitment to Canadian programming annually, regardless of market penetration.

In addition to gathering information, these supplementary questions served to demonstrate, to the applicants and other interested parties, the Commission's determination that pay-television will provide a significant revenue flow to the Canadian program-production industry. In the spirit of the trade magazine editorial that termed the pay-TV licensing battle as 'the last stand for those who want their children to grow up as Canadians' (Cinema Canada 78:24), the CRTC's attitude is derived from the knowledge that all previous attempts to fulfill the most central element of Canada's broadcasting policy have failed.

Canadian content and revenue for production

By deciding that the pay-TV service should be introduced on a discretionary rather than a universal basis, the Commission initially eliminated the model that would have generated the maximum possible revenues for Canadian production. On the basis of a retail cost of $2.50 per month to every cable subscriber in Canada, the only national applicant to propose universal service, Telecanada, projected an average annual Canadian programming budget of $119 million. By way of contrast, among the other national applicants, who all proposed discretionary service, the highest projected market penetration level was 41 per cent in the fifth year of service, and this applicant estimated an average annual Canadian programming budget of $81 million. If actual penetration were to reach only 25 per cent, the applicant projected an average annual Canadian program budget of $49 million. (See Table 6 for the projected penetration levels of the national applicants and other pertinent data).

The fundamental argument against a universal service is the lack of justification for the regulatory regime's mandating the crosssubsidization of pay-television viewers by regular cable subscribers. On 7 October 1981,

TABLE 6
Selected comparison of forecasts provided by the major national pay-television applicants

	LAMB[a]	Telecanada[b]	First Choice[c]	Showplace	Performance	Astratel	CTVA	Premiere
Projected penetration of cable households, year 5	7.50%	100.00%	41.00%	34.00%	25.00%	30.00%	24.27%	33.00%
Pay subscribers, year 5, (in 000s)	330	5650	1850	1250	1500	1500	1460	2000
Retail price to subscriber	$12.95	$2.50	$12.00	$12.00	$15.50	$13.50	$13.00	$13.00
Average annual Canadian program expense (in 000,000s)	$5.00	$119.00	$81.00	$26.00	$30.00	$59.00	$37.00	$42.00
Level of Canadian content								
Total hours, year 1	37.50%	60.00%	50.00%	30.00%	34.00%	31.00%	25.00%	33.00%
Total titles, year 1	45.60%	50.00%	67.00% Eng. 58.00% Fr.	40.00%	39.00%	30.00%	35.00%	50.00%
Profit projection (cumulative, 5-year, in 000,000s)	$7.00	Non-profit	$20.20	$6.80	$17.00	$7.40	$40.00	$24.80

a Successful applicant for national specialty (performing arts) pay-TV service.

b Universal service; all other national applicants proposed discretionary service.

c Successful applicant for national general-interest pay-TV service. Profit projection and average cost per hour to be spent on Canadian programs were revised downwards once First Choice was awarded a nonexclusive license with more competition than had been anticipated. The CRTC imposed a minimum 30 per cent Canadian-content requirement for the first three years, climbing to 50 per cent for year 5.

SOURCE: National Film Board of Canada and Applications

during the licensing hearings, CRTC Chairman John Meisel noted that the Commission was not comfortable with the idea of 'taxing one portion of the population for national goals'. Canadian taxpayers already support a public broadcasting network, whose future could be jeopardized through decreased federal funding if Parliament came to regard a universal service as a relatively cheap method of fulfilling a similar function. An additional fear is that without any need to compete for subscribers, a universal service would not exhibit the kinds of high-quality programming that would appeal to large numbers of Canadians.

An additional paradox lies in the fact that a licensee's ability to achieve the desired level of market penetration will largely depend upon its ability to exhibit blockbuster American movies. Assuming a fixed retail price for pay-TV service and a constant level of penetration, higher U.S. product acquisition costs would result in fewer funds available for Canadian programming. However, diminished acquisition of American films would result in the dissatisfaction of subscribers and consequently lower market penetration - and again fewer funds available for Canadian programming.

In fact, current industry speculation is that all of the applicants greatly underestimated the cost of acquisition of American features. In mid-1981, the Motion Picture Association of America set a minimum tariff per British pay-TV subscriber of eighty cents for top product, forcing the British to abandon plans to include American features in their system (Filmworld 8:1). Successful Canadian pay-television applicants, who formulated their promises on the assumption that major U.S. films would be available for rates similar to those paid by U.S. pay-TV operators (approximately one-half the tariff set for Britain) are at the mercy of the American studios.

The issue of competition

Another issue hotly debated during the hearings was whether the Commission should license a single national applicant (or group of regional applicants) or competing services.[25] One view is that the primary consideration is the consumer interest, which would be 'best served by a

25 Some competing services may be outside the Commission's regulatory

diversity of pay-tv services actively competing with each other' (Consumers' Association of Canada 1981, 14). The opposing argument says that the licensing of more than one national service (or a set of regional services amounting to a second nationwide service) would destroy the financial viability of pay-TV through duplication of costs and competitive bidding for the same foreign programs. Among those advancing the latter argument was the president of the CBC, who stressed that financial viability is the prerequisite to the production of the amount and quality of distinctive Canadian programming expected of pay-TV. He concluded that overlicensing would mean 'not that the Pay-TV licensees would go broke... they would go American, which has been the maxim in Canadian broadcasting' (Johnson 1981, 5, 6, 11).

Core companies

Among independent Canadian producers, all of whom support the introduction of pay television (for obvious reasons), perhaps the most contentious issue involves the role of 'core companies'. The proponents of the concept envision a small number of production companies, located in all regions of Canada, with permanent employees and experience in financing, production, and marketing. Smaller producers would bring ideas to such core companies, who would in turn select the best projects for development and, it is hoped, presale to Canadian pay-television services as well as to other buyers in domestic and foreign markets. Although the proponents of the concept maintain that core companies would 'compete for production monies on the basis of the quality of our ideas and program proposals' (Nielsen and Ferns 1981, 3), many smaller producers fear that special relationships would develop between pay-TV licence-holders and core companies, to the detriment of new players.

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authority. Saskatchewan already has its own provincial pay system, unregulated by the CRTC since the cables are owned by a provincial crown corporation. On 10 March 1982, Fergus-Elora Cable TV Limited filed suit in the federal court for an order prohibiting the CRTC from interfering with this Ontario company's use and enjoyment of its properties; beginning February 5, the company carried a pay-TV service consisting of programming from a U.S. pay-TV package.

The licensing decision

On 18 March 1982, the Commission announced its decision (Canadian Radio-television and Telecommunications Commission 1982). Although it did not license a universal service, it was persuaded by the arguments presented at the public hearing that the adoption of a universal service would be a suitable mechanism to achieve a low-cost, distinctively Canadian pay system. The Commission now seems to regard such a service as a supplement to the discretionary services that were immediately licensed, and it will hold another public hearing to explore various issues concerning the introduction of a nonprofit universal service.[26]

The decision included awarding the following five-year licences:

- First Choice Canadian Communications Corporation: to carry on a national pay-television network in both official languages, with diverse programming including uninterrupted Canadian and foreign feature films and special presentations of high production value.

- Alberta Independent Pay Television: to carry on a regional pay-television network in Alberta, with 70 per cent of its programming to be feature films, and 100 per cent of its profits to be invested in independent Canadian production.

- Ontario Independent Pay Television: to carry on a regional pay-television network in Ontario, with approximately 70 per cent of its programming to be feature films, and 100 per cent of its profits to be invested in independent Canadian production.

26 Two commissioners issued a minority opinion (Canadian Radio-television and Telecommunications Commission 1982) in which they suggested that no public demand has been demonstrated for a mandatory 'CBC without commercials' and expressed the view that 'a mandatory, universal pay television system would have a deleterious, if not devastating, effect upon the discretionary systems licensed by this Decision'. These commissioners also termed the licensing decision 'system overload' and disputed the need for a full system of regional pay-television networks. Within the industry, there is some speculation, perhaps unfounded, that the Commission is not only aware of a mandatory system's possibly devasting effect on the discretionary systems, but that it fully expects and desires the current licensees to fail and to be entirely replaced by a universal system. This scenario appears to ignore the fact that the CRTC originally expressed a preference for

- Star Channel Services: to carry on a regional pay-television network in Atlantic Canada, with a diverse mix of programming.

- Lively Arts Market Builders: to carry on a national pay-television network, with a maximum of 40 per cent of its programming to be feature films and the remainder to be devoted to opera, symphony, dance, theatre, children's programs, and other specialty programming.

- World View Television: to carry on a regional pay-television network in British Columbia, with diverse multilingual programming, of which at least 60 per cent during the evening viewing hours will be in languages other than English, French, or native Canadian languages.

The Commission's proposed regulations for pay-television prohibit the distribution of commercials, as well as the inclusion of programs produced by the licensee or a related production company.[27] The prior approval of the Commission is required for any transaction that would materially affect the ownership or effective control of the licensee or result in the transfer of any of its securities to a person or company with an interest in an undertaking engaged in Canadian broadcast-receiving or the exhibition of pay-television. Licences may not be transferred or assigned, and licensees are expected to begin service no later than 1 April 1983.

Attached to each licence are additional conditions, which are in lieu of general regulatory requirements. They set out specified minimum percentages of total time to be devoted to Canadian programming, of total revenues and acquisition budgets to be expended on investment in or acquisition of Canadian programs, and of programming time and Canadian-acquisition budgets to be used for dramatic programs.

The instrument

For feature film producers, Canadian pay-television represents an important potential revenue source for both new and existing movies. However, it can safely be assumed that many of the hitherto unviewed

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discretionary, rather than universal, service in its call for applications.

27 The multilingual licensee is exempted from the latter provision.

feature films produced during the recent boom have not been distributed for reasons of poor quality, and there is little to be gained if the successful applicants feel obliged to acquire bad films for exhibition simply to satisfy Canadian-content requirements. If the introduction of pay-television successfully injects a massive amount of funds into the production sector, the many actors, technicians, and other personnel who gained experience, even on bad films, during the frantic film activity of 1978 to 1980 will be prime beneficiaries of an immense growth in production.

Among the concerns tempering the production industry's enthusiasm for the licensing decision[28] are the possibility that the competitive regime will force the prices of foreign products up while lowering the prices paid for Canadian productions, and unresolved federal-provincial issues that could delay the introduction of pay-TV into Quebec, British Columbia and possibly other provinces. Other concerns include the lack of protection for Canadian distributors (see Cinema Canada 83:24), and the possibility of further fragmentation of the market.[29]

Of great importance to the production sector is the level of penetration that the pay-TV services will be able to achieve, because this factor will largely determine the amount of money available for Canadian programming. The penetration level may well be adversely affected by consumer confusion concerning the services offered, as well as by consumer resistance to the cost of the service (at least $25 per month, in addition to the basic cable and converter charges, for a package of the three services available in most centres).

28 Cabinet received three appeals to the decision from the industry: from Performance, an unsuccessful applicant; from the Canadian Conference of the Arts; and from a group of film-industry associations and guilds. Common to all was the major concern that by licensing too many competing services, the CRTC was unnecessarily weakening the financial viability of the pay-TV system; the result, they said, will be funds that are insufficient to permit the production of high-quality Canadian programs. On 14 May 1982, however, Minister of Communications Francis Fox announced Cabinet's approval of the regulatory decision, which will not, therefore, be referred back to the CRTC for reconsideration.

29 The Commission intends to call for applications in order to licence two additional general-interest pay-TV networks; a French-language service to serve Quebec and other regions, and an English-language service for British Columbia and the Yukon Territory.

Despite its concerns, the production community is cautiously optimistic and eager to participate in the expansion of the Canadian broadcasting system with the new pay-TV licensees, whose commitment to Canadian content will be carefully monitored by the regulators.

8

CONCLUSIONS

In introducing this study, we described two competing theories of the rationales for government intervention in economic activities. The first, a 'public-interest' theory, is principally normative, taking the view that government interventions are likely to be welfare-enhancing only if they correct for market failures. The second, a 'private-interest' theory, is principally positive in character, suggesting that government interventions are the outcome of interactions among voters demanding policies favourable to their self-interests and politicians trying to generate winning coalitions of political support by supplying policies to politically salient groups of voters. Which of these two theories best accounts for the mix of policy instruments ostensibly designed to promote an indigenous Canadian feature film industry?

Terms of the analysis

'Public-interest' arguments

In our introduction, we sketched four possible market-failure rationales for intervention in the industry and found *prima facie* plausibility for only one: positive cultural externalities. A brief review of the arguments may prove useful.

The argument that subsidies to the Canadian film production industry generate multiplier effects that justify the investment of public resources ignores the simple fact that these subsidies have to be raised by taxes on other sectors of the economy, where the taxes are likely to have a negative multiplier effect. While this effect may be of indeterminate magnitude, there is no *a priori* reason to suppose that society as a whole is better off in net terms as a result of any film subsidies.

Equally tenuous is the argument that heavy degrees of concentration and foreign ownership, particularly at the distribution and exhibition levels of the feature film industry, preclude the production and screening of an optimal quantity of indigenous Canadian films. Even assuming a fully competitive, Canadian-owned industry, it seems highly probable that profit-maximizing would lead firms to produce, distribute, and exhibit films that draw the largest audiences. In fact, monopolists and perfect competitors are likely to behave in the same way in this regard. If the preferences of Canadian audiences have been perverted by inadequate exposure to films emphasizing indigenous themes, then neither a monopolized nor a competitive industry, irrespective of where its owners come from, has any incentive to ignore prevailing tastes or to attempt to change them. In any event, none of the existing policies purports to address directly issues of concentration and foreign ownership at the distribution and exhibition levels of the Canadian film industry.

Another argument is that film production in Canada is an infant industry in which firms face high barriers to entry because of substantial economies of scale and/or because positive production externalities are present. This attempt to justify initial public subsidization is not especially compelling. There is little evidence that film production can offer very substantial economies of scale, given the number of firms in the industry. Positive production externalities may indeed be present: a firm that develops specialized expertise in the industry - say, by training local personnel - may find that subsequent entrants are able to capture some of the benefits of this expertise - say, by siphoning off personnel trained at the first firm's expense or by adopting production techniques it has developed. However, it is not clear that these externalities loom larger in film production than in a host of other industries, such as data processing and computer technology. Most film personnel are hired on a per-project basis, rather than as part of an ongoing production company's staff. This fact may suggest that private-sector producers make relatively small investments in human capital and support the case for government subsidies to professional training programs, but it does not seem to lend credence to the case for subsidies to the industry. Moreover, in terms of natural comparative advantage, it is not clear that Canada, in part because of climatic constraints, enjoys locational advantages over many other places

for developing a local film industry. However, its geographical and cultural proximity to the United States can be viewed as an advantage in terms of developing an export industry.

The final market-failure argument for intervention - positive cultural externalities - is elusive and difficult to verify, but it seems to have force. The argument here is that all Canadians, film-viewers or not, are likely to be made better off by a strengthened sense of common heritage, natural identity, and common values and purposes. To the extent that feature films can promote this objective by emphasizing Canadian themes, runs the argument, subsidies should be forthcoming; in their absence, this social benefit cannot be fully captured by private economic agents in private market transactions, so the result is underproduction of a socially desirable good. In our analysis, we have chosen to accept this argument at its face value, and in this conclusion we attempt to evaluate the extent to which existing policies seem to attach significant weight to it.

The 'private-interest' theory

The alternative to market-failure arguments for state intervention is the 'private-interest' theory. It would lead us to expect a series of policies that confer significant economic benefits on discrete interest groups while spreading the costs as widely and invisibly as possible so that the cost-bearers face substantial information and transaction costs in ascertaining the effects of these policies and reacting effectively to them. In our context, the principal classes of potential winners from subsidy policies are likely to be people employed in the film industry and/or suppliers of capital to it. In addition, people with a strong ideological commitment to Canadian cultural nationalism may perceive themselves to be winners. The principal potential losers are likely to be taxpayers at large.

The size of the subsidies

Before proceeding to analyze the policy instruments as satisfying the 'public-interest' or the 'private-interest' rationales for intervention, it seems useful to know how much money they involve. Table 7 sets out our best guesses on the extent of the subsidies for 1976 to 1981 for each of the major classes of instruments reviewed in this paper, as they relate to the production of feature films only.

TABLE 7
Feature film industry subsidies: cumulative expenditure 1976-81

Tax expenditures	$ 74,000,000[a]
Direct subsidies, loans, and investments	36,000,000[b]
Public enterprise	12,000,000[c]
Total subsidy	$122,000,000

a Using benchmark depreciation rate of 30 per cent (i.e., the allowance that might otherwise be available). The total budget value of certified feature films during the period was higher than the total capital cost allowance claims.
b Based upon parliamentary appropriations to the Canadian Film Development Corporation plus that portion of provincial subsidies directed to the feature film industry.
c Incorporating overhead and the National Film Board's share of co-production budgets.

Although the estimates are rough, certain conclusions can be drawn from them. For example, although the subsidy to the feature film industry for the period represents a fairly large commitment of government funds, the total figure is about equivalent to the current aggregate production cost of fifteen Hollywood features or to the CBC's production budget for half a year. In addition, it is clear that the capital cost allowance under the Income Tax Act has, in recent years, dominated the other instruments in terms of the size of the subsidies involved.

Evaluation and analysis of instruments

We proceed now to a comparative evaluation of the economic and political characteristics of the various major classes of instruments in the order of the scale of the subsidies involved.

Tax instruments

The capital cost allowance exhibits crosscutting economic and political properties. If the objective of the policy is to respond to the market-

failure argument of positive cultural externalities, it must be judged largely a failure. As the policy is administered, it focusses on the character of the inputs (for example, the citizenship of various production personnel) and not the character of the outputs. Predictably, persons who provide capital to film productions view these input requirements as merely a constraint to be accommodated in maximizing the return from their investment. As the record shows, this return is still best maximized by producing mass-appeal movies, and only a tiny percentage of the films that have qualified for the capital cost allowance can be said to have addressed distinctively Canadian themes or to have otherwise contributed to a strengthening of the Canadian identity.

If one takes the positive-externalities argument seriously, what is required is a set of output qualifications that answer it as input restrictions cannot. Such a policy instrument would promote films that develop Canadian themes with the best acting and technical talent that can be obtained anywhere, given relevant cost constraints. However, even if this approach ensured the production of the desired output in the most efficient way, how could policy-makers ensure that the films would be screened? The key assumption of the positive-externalities argument is that box-office demand will not reveal the true social demand for the product; yet theatres have few incentives to screen films that have a low box-office draw. This dilemma suggests that, in addition to or instead of the capital cost allowance subsidy to production, the positive-externalities argument demands a subsidy to theatre chains or viewers to ensure exhibition. Thus, films could be shown profitably to small audiences or ticket prices for Canadian films could be subsidized to increase consumer demand for them.

When we turn to the political properties of the capital cost allowance, we can see why many of these options are unlikely to be appealing to policy-makers. To substitute output qualifications for input qualifications might quickly fracture any apparent abstract consensus about kinds of Canadian values or themes feature films should promote. This kind of debate is likely to be a negative-sum game for politicians. Abandoning input qualifications would likely alienate the industry's Canadian employees and investors, who derive substantial material gains from the present policy. Subsidizing exhibition networks would probably alienate taxpayers, who would see their tax dollars being allocated to wealthy, often foreign-

owned corporate chains. Cultural nationalists might perceive a viewer subsidy as offensive in that it could be interpreted as implying that Canadian films are inferior offerings that need to use bribes to attract audiences.

The present policy possesses the political virtues of appearing to be a strong response to demands of cultural nationalists, of offering tangible economic benefits to well-defined groups of Canadian employees and investors, and of rendering the costs of the subsidy barely visible by dispersing them over the general body of taxpayers. The policy's only political liablity is its open-ended costs, in terms of the loss of government revenues generated by it, and potential losses will be substantially reduced if the capital cost allowance is cut to 50 per cent, as planned, in 1983.

Direct subsidies, loans, and investments

Examining existing direct subsidy, loan, and investment policies from the perspective of the positive-externalities argument raises questions and dilemmas similar to those raised in the discussion of the capital cost allowance. For example, the Canadian Film Development Corporation makes investments and provides loans on the basis of input, not output, qualifications. As the record shows, this approach has led to the production of very few feature films that can reasonably be described as developing Canadian themes. Switching to output qualifications and abandoning input qualifications would be productively efficient, but such a scheme would present the same kinds of political disadvantages as we suggested for a capital cost allowance tied purely to output criteria.

Moreover, such a policy might arouse ideological opposition from subsets of voters who perceived it as an attempt by politicians and bureaucrats to influence public taste directly through the control of film mix and content. Such opposition could be muted somewhat by the use of buffer organizations, such as the CFDC, but it would be unlikely to be dissipated altogether. The relatively mechanical nature of the input tests presently applied for the capital cost allowance and CFDC subsidies seems a politically realistic compromise between the benefits of satisfying ideologically sensitive cultural nationalists and the costs of antagonizing ideologically sensitive voters who value freedom of expression highly. This

political compromise is also attractive to the providers of the inputs, labour or capital, who receive the subsidies.

In all these respects, subsidies through the CFDC exhibit economic and political properties similar to those of the capital cost allowance. The one distinctive political cost to a loan/investment agency approach is the high visibility of costs. They appear in the public accounts and must be voted on each year by Parliament when it makes appropriations. This difference may partly explain why such subsidies have been much less extensively employed in recent years than tax expenditures under the capital cost allowance.

Other direct subsidies

Although the various CFDC assistance programs constitute the most visible direct subsidies to the film industry, our consideration of this class of instruments is not complete without mention of Canada Council grants and the tiny but unique Wintario Half-Back program of 1979. The latter is particularly interesting because it is the only subsidy that has been clearly directed at the exhibition of Canadian films. Unfortunately, we have no data on what effect this policy had on the screening policies of Ontario's theatre chains or on the size of viewing audiences. The costs were dispersed across all purchasers of Wintario tickets and thus had very low visibility. The symbolism was probably not as offensive to cultural nationalists as an explicit two-price system for Canadian and foreign films, although, because the subsidy was based on input criteria, it is not clear how it was responsive to the positive-externalities argument. The winners, as with the other subsidy policies reviewed, appear to have been employees and investors in the film production industry: exhibitors and distributors received unique benefits. At best, cultural nationalists derived merely symbolic benefits from the program. Wintario ticket purchasers generally were the losers.

A direct subsidy, such as one provided by the Canada Council, is one of only two available instruments to support the production of non-commercial films. (The other is public enterprise.) It is not possible to design alternative instruments to attract private investors to an activity that is wholly uneconomical. Indeed, any attempt to mould purely cultural activities to fit an industrial framework could have severe ramifications for artistic freedom.

Public ownership

In some ways, the National Film Board does meet the demands of the positive-externalities argument since the Board has been successful in producing some culturally significant feature films. However, they have numbered no more than six over the past decade, and despite their wide acclaim in critical circles, they have enjoyed very little general exposure through commercial theatre networks. The Board also consistently produces superior nonfeature films, but by nature, the short film and documentary have less opportunity to reach and influence the public.

As an arm of the government, the National Film Board may enjoy some advantages in responding to positive cultural externalities. Its output measures of what films to produce need not be articulated with great explicitness and can be adapted and redefined on a flexible, ongoing basis in response to changing political and social perceptions. However, to the extent that the NFB relies on a cadre of full-time in-house production personnel, it loses flexibility in assembling an efficient combination of production inputs; a consequent loss of productive efficiency is likely. This problem could be mitigated by contracting out aspects of production, although if this solution were taken to the extreme, the roles of the Board and the CFDC would tend to coalesce. Like most of the other subsidy instruments reviewed, NFB subsidies to film production do not address the problem of ensuring that the films are widely screened and so do not respond fully to the implications of the positive-externalities argument. (It must also be noted that the CBC, another significant public enterprise, is capable of providing NFB productions with a high level of exposure, but that it does not generally do so.)

With respect to the political characteristics of this subsidy policy, the direct state involvement in the production of films probably has a high symbolic value for cultural nationalists. A countervailing political disability is that other subsets of voters, concerned with freedom of expression, may attach a negative value to direct government ownership of part of one medium of public communication. Another disability is that the policy provides limited support for employment in the industry and offers no advantages to private-sector investors. Moreover, as with the CFDC, the costs of the policy are highly visible and subject to regular political scrutiny and review.

Direct regulation: quotas and levies

Content regulation in the broadcast media, as administered by the CRTC, suggests a potential for similar regulation of feature films screened in Canada. The voluntary quota plan that major theatre chains have participated in during recent years indicates the form that this regulation might take: theatre chains could be required to screen a set quota of Canadian films or allocate a prescribed percentage of their screening time to Canadian films.

From an economic perspective, this policy seems to offer substantial advantages over other methods of responding to the positive-externalities argument.

In defining Canadian feature films for the purposes of such regulation, the choice between input and output criteria would present the same set of economic and political considerations we have already considered. However, if output criteria were chosen in order to respond to the positive-externalities argument, the distribution and exhibition networks would presumably seek out films that were produced most efficiently with respect to cost and quality considerations, within the output constraints. Quota regulation would also ensure the actual screening of these films.

The question remains whether such a policy would increase the number of Canadians who choose to expose themselves to these films. One might argue that by narrowing the choice of films available to theatre-goers, it would increase the demand for Canadian films. This argument is somewhat speculative. Unless the choice were drastically restricted, theatre-goers might focus their attention (and dollars) on the remaining non-Canadian films or simply attend films less frequently (which would be in line with the current long-term trend away from movie-going in favour of home entertainment).

To forestall either of these effects, the quota regulation could be supplemented with a subsidy to theatre-goers who chose to attend Canadian films; two possible methods would be a policy like the Half-Back program and a subsidy to the theatre chains whereby they could reduce ticket prices. Alternatively, one could resign oneself to relatively sparse audiences for Canadian films. Then the theatre chains would initially absorb the costs of screening films to uneconomically small audiences, but

they would presumably pass these costs on to viewers of non-Canadian films. The result would be one class of viewers crosssubsidizing another for the opportunity of viewing films that the latter preferred not to see.

The political attractions of quota regulation are significant, in part because it requires no expenditure of government resources. In the absence of supplementary subsidies, the private sector would bear all costs. Whether a quota policy would appeal to local employees and investors in the film production industry would depend on whether policy-makers chose input or output criteria or a combination of the two. If output criteria were chosen, the policy would have a strong appeal to cultural nationalists, who would be able to observe tangible results from the policy. The choice of input criteria would have considerable appeal for the industry's economic interests but less for cultural nationalists, who would observe mass-appeal movies still being produced with little emphasis on distinctively Canadian themes. A combination of input and output criteria might satisfy both groups, although if the resulting films drew sparse audiences, the returns to the suppliers of productive inputs would be severely attenuated. In that event, the choice would again be whether to supplement quota regulation with viewer subsidies or production subsidies or both. In the case of viewer subsidies, although the costs to the viewers of non-Canadian films might be relatively invisible at some levels, pushing crosssubsidization to the level at which the private sector could produce Canadian films profitably might make them visible. At that point, politicians would risk antagonizing the viewers of non-Canadian films, who would become aware of bearing both the costs of the crosssubsidy and the costs of restricted viewing choices. This potential problem might make it politically expedient to finance viewer subsidies out of general revenues. However, the fact remains that quota regulation alone is unlikely to be able to satisfy both 'public-interest' and 'private-interest' rationales for intervention. A complex mix of policies involving producer subsidies, viewer subsidies, and quota regulation may be necessary to produce any substantial congruence between the two.

In any event, the federal government probably cannot impose mandatory quota policies for constitutional reasons, which largely explain their absence in the feature film industry in contrast to the Canadian-content regulations established in the broadcasting sector. And provincial

governments, which have jurisdiction to regulate theatres, have few incentives to engage in quota regulation designed to promote Canadian films. It would impose costs on subsets of viewers within a province, generate benefits for other subsets of viewers within the province, create positive-externalities for some nonviewers both within and outside the province, and benefit industry employees and investors, many of whom might also reside outside the province. Thus, the full costs of the policy would be borne by voters within the province while many of the benefits would go to outsiders. This political calculus is not likely to prove attractive to provincial politicians, with the possible exception of those in Quebec, where a more insulated French-language film industry has developed.

Neither a quota nor a box-office levy would be likely to attain the desired effects in the absence of nationwide implementation. Although a levy, unlike a quota, might not pose insurmountable constitutional difficulties, the federal government is very reluctant to implement any program resembling an earmarked tax for the benefit of a particular sector. It is also faced with a significant barrier in the form of probable American retaliation. The firm opposition of the politically powerful multinational distributors to the introduction of a Canadian levy currently renders futile all considerations of the technically attractive properties of this instrument, which would be superior to a quota because it would not interfere with consumer wants yet could serve as a positive incentive to domestic producers.

Summary

With regulation through quotas and levies foreclosed to the federal government, the government is left with subsidy policies as its only available instruments of intervention. Given this restriction, what kinds of policies would constitute a serious response to the positive cultural externalities argument? Here is one scenario.

- First, films qualifying for subsidies would be required to satisfy output, not input, criteria. The process would presumably involve determining content guidelines and applying them to films after their production. It would likely be bureaucratically oriented, although one can

envisage the use of advisory panels of private citizens or experts to mitigate the negative ramifications of bureaucratic control in cultural matters.

- The guidelines would identify the types of themes and degrees of emphasis required for a film to be certified 'Canadian' (preferably avoiding narrow nationalism), but film producers would be left free to choose the most efficient combination of inputs to meet them. The administrators of the certification process would not be asked to pass judgment on the technical quality of a film. No production subsidies, such as the capital cost allowance or CFDC assistance, would be provided because they reduce the costs to film producers of making bad films and also constrain the inputs upon which they can draw.

- In order to ensure commercial screening of the best of the certified films, the government would offer lump-sum subsidies to the theatre chains and independent exhibitors. (These subsidies would, of course, specify screening obligations with some precision.) The subsidies could be raised or lowered to generate whatever government considered an optimal level of exposing Canadians to Canadian films. The exhibitors, in turn, would adjust ticket prices, with the benefit of these subsidies, to maximize their returns from screening Canadian films.

- Because it would not be possible to require people to attend Canadian films and box-office receipts and refreshment sales would continue to be important sources of revenue, the exhibitors would presumably acquire films that both met the Canadianization restraint and appealed to as large an audience as possible. This incentive would, among other things, encourage the choice of films that are well-produced in a technical sense and thus provide a quality-control check at this point.

- An alternative policy would be providing subsidies to individual viewers. But subsidies to theatre chains and independent exhibitors are likely to involve lower transaction costs.

- The only remaining alternative would be government ownership of a nationwide theatre chain and the use of public resources to purchase Canadian films to show in it. This would, however, likely prove much more cumbersome and inefficient than subsidies to existing theatres, given the government's lack of expertise in operating a theatre chain.

In offering this scenario we certainly do not mean to suggest that one measure, directed only at domestic theatrical exhibition, would be adequate aid to the film industry. (Alone, this measure would not be sufficient to allow recoupment of the costs of production.) Rather, we seek to indicate what the contours of a serious response to the positive cultural externalities argument would need to look like. Clearly, this scenario stands in stark contrast to the prevailing set of policies. Without denying the importance of the ideological constraints involved in government intervention in the cultural sector, the starkness of this contrast leads us to conclude that present policies have not been primarily motivated by the positive cultural externalities argument.

What we have instead is a politically appealing set of policies that place primary emphasis on production subsidies tied to input criteria. Under these policies and subject to the constraints imposed by them, film producers will attempt to maximize the returns on their investment by producing mass-appeal movies. Thus, some movies will be made in Canada, and some Canadian-made films will be screened both in this country and elsewhere. However, in seeking the largest possible market for a film, a producer will rarely find it economically rational to emphasize distinctively Canadian themes; the economic interests of employees and investors in the industry are usually not served by narrowing the market in this way, although experience has proven that the occasional 'small' film can find its own audience and earn a profit.

It is easy to see the political appeal of a tax expenditure policy such as the capital cost allowance. Local employees and investors in the industry benefit substantially, some Canadian-made films get screened in Canada and elsewhere (perhaps a symbolic benefit to cultural nationalists), and the costs are thinly and invisibly spread over the general body of taxpayers. However, in terms of a real response to the positive-externalities argument, very little is achieved. What we have is Canadians attempting to produce box-office hits for sale in Canada and abroad with publicly provided money. Whether or not this is a worthwhile public policy goal is not for us to judge. But in terms of the two competing theories of state intervention, 'private interests' seem to have benefited vastly more from current policies than has any perceived general 'public interest' in promoting a stronger Canadian cultural identity - either by showing Canadians to themselves or by showing the rest of the world what Canadians can accomplish.

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